IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

NESTLÉ PURINA PETCARE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
THE BLUE BUFFALO COMPANY LTD.,	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	

COMPLAINT

Plaintiff, Nestlé Purina PetCare Company ("Purina"), for its complaint against defendant The Blue Buffalo Company Ltd. ("Blue Buffalo" or "Defendant"), alleges and states as follows:

NATURE OF ACTION

1. This is an action for false advertising, commercial disparagement, and unjust enrichment arising from defendant Blue Buffalo's pattern of false and deceptive advertising. With tens of millions of dollars in advertising and a small army of in-store marketers, Blue Buffalo has built a brand targeted at ingredient-conscious pet owners. It has become increasingly clear, however, that Blue Buffalo's brand is built instead on a platform of dishonesty and deception. Testing from an independent laboratory reveals that Blue Buffalo is falsely promoting its pet food as containing "NO Chicken/Poultry By-Product Meals" when, in fact, Blue Buffalo pet food contains significant amounts of chicken/poultry by-product meals. Contrary to Blue Buffalo's so-called "True Blue Promise," many Blue Buffalo products also contain corn, other grains, and artificial preservatives when they promise otherwise. In short, Blue Buffalo is not being honest with consumers about the true ingredients of Blue Buffalo products.

2. Spending roughly $50 million per year on advertising, Blue Buffalo puts heavy emphasis on its ingredient and nutritional claims throughout its website, product packaging, advertisements, and other like promotional materials. Despite Blue Buffalo's massive marketing barrage, Purina has discovered that Blue Buffalo—and not the "big name" pet food manufacturers Blue Buffalo routinely criticizes in its advertising—is concealing the truth about the ingredients in its products. Investigation and scientific testing by an independent laboratory completed in April 2014 reveals as follows:

Blue Buffalo Product Claimed to Contain No Poultry By-Products	**Percentage Poultry By-Product Meal in Kibble (Two Samples)**	**Percentage Poultry By-Product Meal in LifeSource Bits (Two Samples)**
Life Protection Indoor Health Chicken & Brown Rice Recipe	25%, 24%	2%, 2%
Life Protection Adult Chicken & Brown Rice Dog Food	22%, 0%	
Wilderness Adult Chicken Recipe Dog Food		9%, 11%
Wilderness Adult Chicken Recipe Cat Food		8%, 5%
Longevity for Adult Cats		3%, 0%
Freedom Adult Grain Free Chicken Dog Food		2%, 2%
Basics Adult Turkey & Potato Cat Food		2%, 2%
Freedom Grain-Free Chicken for Indoor Cats		2%, 1%
Longevity for Adult Dogs		2%, 1%

Testing was also conducted for the presence of rice and corn, with the following results:

Blue Buffalo Product Claimed to Contain No Grains	**Percentage Rice and/or Corn in Kibble (Two Samples)**	**Percentage Rice and/or Corn in LifeSource Bits (Two Samples)**
Wilderness Adult Chicken Recipe Cat Food	0%, 1%	2.2%, 2.5%
Freedom Adult Grain Free Chicken Dog Food		3%, 1%
Wilderness Adult Chicken Recipe Dog Food		2.2%, 1.5%
Freedom Grain-Free Chicken for Indoor Cats		2%, 2%

Testing was conducted using samples of multiple formulas of Blue Buffalo pet food purchased at retail stores on both the East and West Coasts. Remarkably, for some Blue Buffalo products, chicken/poultry by-product meals comprise upwards of 20% of the product by weight, despite the "NO Chicken Poultry By-Product Meals" wording on the label.

3. Fundamental to Blue Buffalo's marketing are categorical assertions that Blue Buffalo products are allegedly superior to competitor brands because Blue Buffalo products are free from these ingredients. Through Blue Buffalo's advertising and promotional efforts in which it advocates its products as made with "only the finest natural ingredients" and free from "less than desirable" ingredients such as chicken/poultry by-product meals, corn, and preservatives, Blue Buffalo has become a pet food brand that consumers have come to associate—falsely—with very high, "ultra-premium healthy" pet food. To make matters worse, Blue Buffalo charges very high "ultra-premium" prices based on the same false attributes. Blue Buffalo's products are significantly more expensive than the pet food products they use for comparison purposes on their website.

4. Purina is not alone in exposing Blue Buffalo's lack of honesty with consumers. Purina brings this lawsuit in the wake of an investigation and recent ruling of the National

Advertising Division (NAD) of the Council of Better Business Bureaus that Blue Buffalo is engaging in misleading advertising practices. At the conclusion of a process where Blue Buffalo had the opportunity to submit substantiation for its advertising claims, the NAD concluded in a detailed written decision: "[Blue Buffalo] has not provided any evidence that 'big name' pet food manufacturers … are actively concealing the truth about the ingredients in their products." (NAD Case #5696, decided March 11, 2014, attached hereto as Exhibit A, hereinafter "NAD Ruling").

5. Consequently, Blue Buffalo is misleading consumers not only about the ingredients in its own products, but also about the ingredients in competing products. In the NAD Ruling, the NAD sharply criticized Blue Buffalo's advertising tactics and recommended that Blue Buffalo correct its television commercials by removing all of its unsupported allegations that Blue Buffalo's competitors are misleading consumers. (*Id*. at 8-10, 14).

6. The NAD also instructed Blue Buffalo to overhaul its "True Blue Test," which Blue Buffalo offers on its website as a comparison tool for consumers to use to compare certain characteristics of Blue Buffalo's products versus those of competitors (including Purina products). The NAD determined, among other things, that: (a) Blue Buffalo was guilty of making sweeping allegations about the ingredient content of all products offered by certain competitors, when in fact such statements may only be true for a fraction of those competitors' product offerings; and (b) the information displayed about competitor products was not always current. (*Id*. at 11-4). Blue Buffalo preaches a message of truth, but is not practicing it.

7. Blue Buffalo's behavior is unlawful and just plain wrong. Through this legal action, Purina seeks to halt Blue Buffalo's pattern of false advertising and consumer deception.

THE PARTIES

8. Plaintiff Purina is a leading pet food and nutrition company with a rich history spanning over 85 years. Purina makes and sells pet food, treats, and related products in the United States and worldwide in grocery stores, mass merchandisers, pet stores, and online. Purina is a Missouri corporation with headquarters at 901 Chouteau Avenue, St. Louis, Missouri 63102.

9. On information and belief, Defendant Blue Buffalo is a Delaware corporation with headquarters at 444 Danbury Road, Wilton, Connecticut 06897. Blue Buffalo is in the business of marketing and selling pet food, pet treats, and related products.

JURISDICTION AND VENUE

10. This is an action for false advertising and arises under the Trademark Act of 1946, 15 U.S.C. § 1051, *et seq*. ("Lanham Act") and the common law of the State of Missouri.

11. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction over the related state and common law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367(a). This Court also has subject matter jurisdiction on the separate and independent ground of diversity of citizenship pursuant to 28 U.S.C § 1332(a). The parties are citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs.

12. This Court has personal jurisdiction over Blue Buffalo pursuant to Missouri Revised Statute § 506.500 because Blue Buffalo advertises and sells its products to retailers and consumers in Missouri. Upon information and belief, Blue Buffalo and its agents have prepared, disseminated, made available or broadcasted television commercials, in-person promotions, print advertisements, Internet advertisements and related materials, all of which are at issue here, in this District. On information and belief, Blue Buffalo employs "pet detectives" in Missouri to

promote sales of Blue Buffalo products to consumers in various retail outlets in Missouri. Additionally, Blue Buffalo is presently building a factory in Joplin, Missouri, and is actively recruiting employees to work in this factory. Blue Buffalo maintains a registered agent for service of process in Missouri.

13. Venue is proper in this District under § 1391(b)(2) and (c) because a substantial part of the events or omissions giving rise to this action have occurred and/or will occur within this District, and the Defendant resides in this District.

BLUE BUFFALO'S FALSE AND MISLEADING ADVERTISING ACTIVITIES

14. Blue Buffalo's product promotion strategy is centered around its ingredient claims and promises, and the value of its brand is dependent on such claims. Nutritional and ingredient claims pervade Blue Buffalo's website, its product packaging, its print ads, its television ads and other like advertising materials. As a consequence of and in reliance on these claims, retailers and consumers are willing to pay and have paid a substantial price premium for Blue Buffalo products.

15. Blue Buffalo's false advertising statements have had wide consumer reach. On information and belief, Blue Buffalo spent over $50 million on advertising in 2013 comprised of a wide array of national print, television, and Internet ads. On information and belief, Blue Buffalo is poised to spend another $50 million or more on advertising in 2014. Many of these advertisements include statements that are materially false and misleading, and were made with the specific intent to persuade consumers to purchase Blue Buffalo products. Consumers have relied on these false and misleading statements in making their decisions to purchase Blue Buffalo products.

"NO Chicken/Poultry By-Product Meals"

16. Blue Buffalo advertises a "so-called TRUE BLUE PROMISE" claiming unequivocally that its products contain "NO chicken/poultry by-product meals:"

Source: Blue Buffalo website 4/22/2014

In addition to its website, Blue Buffalo places the "True Blue Promise" on every label of its products. Additionally, Blue Buffalo's sales employees verbally communicate this promise to consumers on site at pet stores. The "True Blue Promise" is false because Blue Buffalo products actually contain chicken/poultry by-product meals and other ingredients, contrary to the "promise."

17. Blue Buffalo tries to boost the credibility of its advertising through more detailed explanations and "Q&A" segments on its website:

What's Not In BLUE and Why

While the high-quality ingredients we include in BLUE are the foundation of our healthy, holistic diet, what we choose not to include is of equal importance.

There are many ingredients that are considered less than desirable by pet parents who want to feed their dog or cat with the same care as a family member. Surprisingly, when you look at dog food and cat food labels, you'll see some of these ingredients in many of the leading pet food brands – but not in BLUE.

Chicken or Poultry By-Product Meals

The definition of Poultry By-Product Meals, as stated in the AAFCO (Association of American Feed Control Officials) Publication 2009 reads, "Poultry [Chicken] By-Product Meal consists of the ground, rendered, clean parts of the carcass of slaughtered poultry, such as necks, feet, undeveloped eggs and intestines, exclusive of feathers, except in such amounts as might occur unavoidably in good processing practices. If the product bears a name descriptive of its kind [i.e. "Chicken By-Product Meal"] the name must correspond thereto."

At Blue Buffalo we use "Chicken Meal" or "Turkey Meal" made from the whole meat of the birds, not by-products. Poultry or chicken by-product meals cost a lot less than meals made from whole meat. At Blue Buffalo we think the cost is well worth it to know exactly what's in our food.

Source: Blue Buffalo website 4/22/2014

Does BLUE dog food or BLUE cat food contain chicken or poultry by-product meals?

BLUE pet food contains no chicken or poultry by-product meals. What's more, we do not use corn, wheat or soy in any of our recipes.

Source: Blue Buffalo website 4/22/2014

18. Blue Buffalo's statements that its products contain "NO chicken/poultry by-product meals" and its attempt to differentiate Blue Buffalo products from competing brands are false because Blue Buffalo's products actually contain a significant amount of chicken/poultry by-product meals. In short, Blue Buffalo has broken its "True Blue Promise" to consumers. For example, Blue Buffalo attempts to differentiate its products from "many of the leading pet food brands" by contending that Blue Buffalo products do not contain "ingredients . . . considered less than desirable by pet parents" such as "chicken or poultry by-product meals." This is false.

19. Purina engaged an independent laboratory to conduct testing to determine the ingredient makeup of a number of Blue Buffalo products. The scientific testing revealed that, contrary to Blue Buffalo's representations to consumers that its products do not contain

chicken/poultry by-product meals, Blue Buffalo's products actually do contain a substantial percentage of chicken/poultry by-product meals—not trace amounts. Indeed, the testing revealed that chicken/poultry by-product meals were the most prevalent ingredient and comprised upwards of 20% of the product by weight of some of the tested Blue Buffalo products.

"Superior Nutrition"

20. Blue Buffalo makes statements that consumers should "Choose BLUE" because its products allegedly provide pets with "superior nutrition" as compared to those of competitor products. Blue Buffalo's "superior nutrition" claims are premised in part on its assertions that its products do not contain certain ingredients such as chicken/poultry by-product meals.

Source: Blue Buffalo website 4/22/2014

21. Blue Buffalo's "superior nutrition" claims were sharply criticized in the recent NAD decision. Particularly, the NAD concluded:

> "[Blue Buffalo] has not provided any evidence that 'big name' pet food manufacturers … are actively concealing the truth about the ingredients in their products."
>
> * * *
>
> "[Blue Buffalo] has not provided any evidence that meat by-product meal is *not* a high quality ingredient or that it is not nutritious, or that products which include meat by-product meal are less nutritious than BLUE's or similarly positioned products that do not."

(NAD Ruling at 10). In its criticism of Blue Buffalo's efforts to disparage the nutritional value of by-product meals, the NAD also explained that "[i]n fact, NAD has noted in prior decisions involving advertising for pet foods that chicken by-product meals are nutritious." (*Id.*). In support of its finding that Blue Buffalo's statements alleging "superior" nutrition were false and baseless, the NAD explained:

> "some dogs and cats have allergies or sensitive stomachs which preclude eating foods which include meat, and no allowance is made for products designed for pets with dietary restrictions in any of the challenged advertisements."

(*Id.*).

22. Blue Buffalo's statements that its products are nutritionally superior to those of competitors are false because, as found by the NAD, there is no evidence that Blue Buffalo's products are any more nutritious than similarly positioned competitive products. Indeed, Blue Buffalo cannot distinguish its products as allegedly "superior" over competitive products for not having chicken/poultry by-product meals as the testing reveals that its products contain this precise ingredient.

Comparative Advertising

23. Blue Buffalo's advertising features comparisons between Blue Buffalo products and those of its competitors, which represents and sends a message to consumers that Blue Buffalo's products contain better ingredients and that Blue Buffalo is, unlike its competitors, honest about the ingredients that it uses. Blue Buffalo even offers to give consumers information about "How [] some brands categorize certain ingredients to make their food appear healthier," falsely implying that Blue Buffalo is honest and does not engage in such tactics.

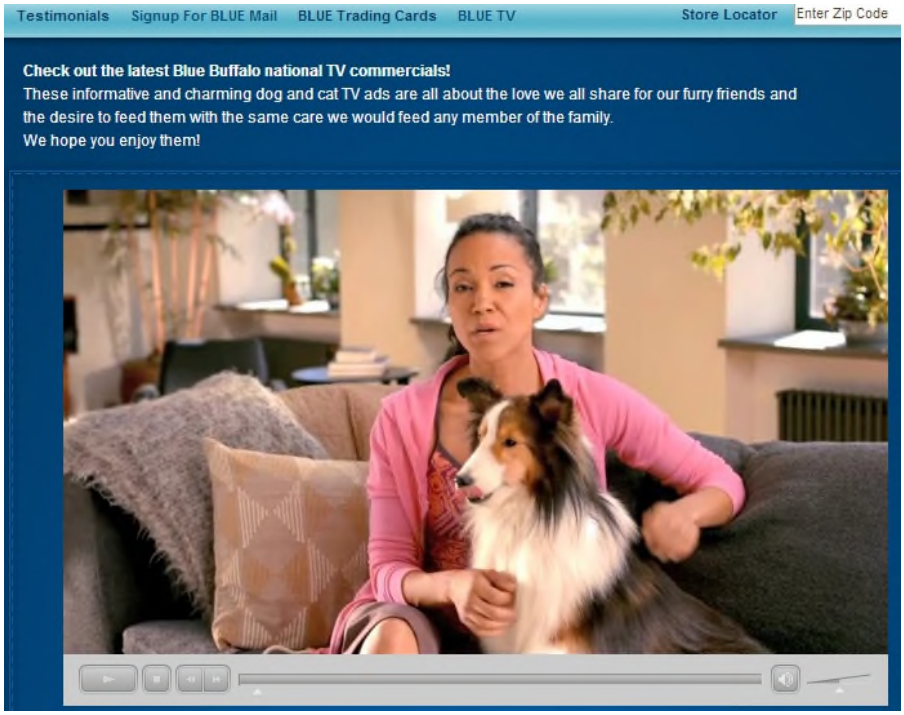
Source: Blue Buffalo website 4/22/2014

24. Blue Buffalo has aired and continues to air nationally-televised commercials featuring pet owners who allegedly "switch to Blue Buffalo" after learning the "truth about big name dog foods." For example, one of Blue Buffalo's commercials states verbatim:

> ***When pet parents learn the truth about big name dog foods, they switch to Blue Buffalo***. All Blue Life Protection foods are made with real meat first, plus wholesome whole grains, veggies and fruit.

> I didn't know how my dog's big name food stacked up, so I went to Blue's website, and I took the True Blue Test. It was ***clear***, Blue had everything that I wanted and ***none*** of the stuff I didn't want.
>
> Only Blue has LifeSource Bits. A precise blend of beneficial nutrients. And now we've enhanced LifeSource Bits with powerful antioxidant rich ingredients, including pomegranate, pumpkin, spinach, apples, blackberries, blueberries and cranberries. We call it our Super 7 package. When you love them like family, you want to feed them like family. That's why I feed him Blue. With Super 7 Life Source Bits, Blue is better than ever. ***Take the TrueBlue Test today, and see how your dog's food compares to Blue***.

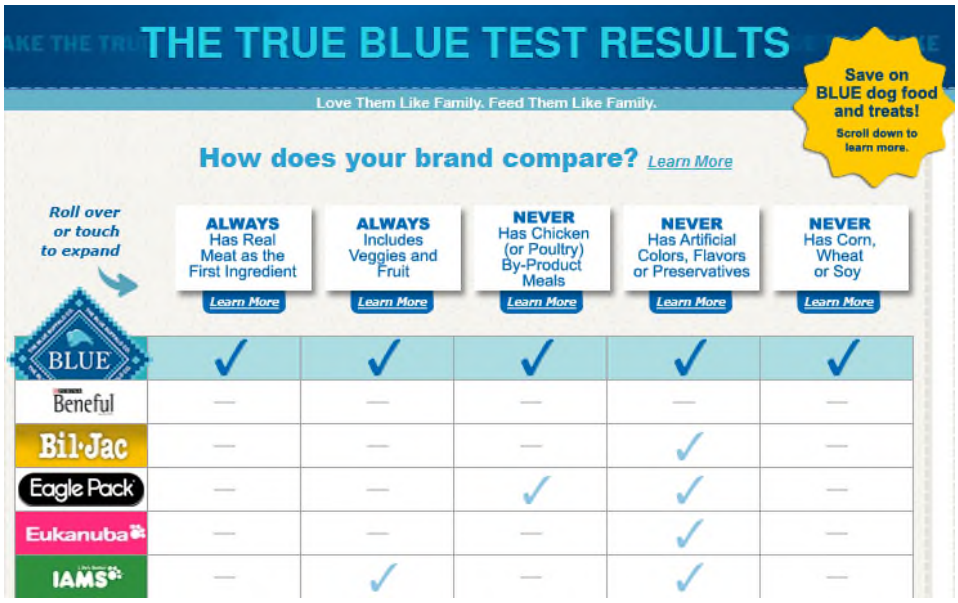
(Blue Buffalo website: http://www.bluebuffalo.com/tv-commercials) (emphasis added).



Source: Blue Buffalo website 4/22/2014; "BLUE Dog Food" commercial

25. Blue Buffalo even has a staff of salespeople who dress similarly to pet store employees and approach consumers in pet store parking lots (such as PetSmart®) to inform consumers of the quality of Blue Buffalo's products as compared to competitive products, including the falsehood that Blue Buffalo's products do not contain any chicken/poultry by-product meals and that Blue Buffalo honors the "True Blue Promise."

26. To help misleadingly differentiate itself from other competing brands, Blue Buffalo offers through its website what it has coined the "True Blue Test," which allows consumers to compare the alleged ingredient contents of Blue Buffalo's products with those of other leading brands, including those of Purina. (*See, e.g.*, Exhibit D). Among other claims, the "True Blue Test" falsely advocates that Blue Buffalo's products "NEVER Has Chicken (or Poultry) By-Product Meals" and identifies competing leading brands that, by Blue Buffalo's assessment, do. (*See, e.g.*, *id.*). These statements are materially false because Blue Buffalo products, as tested, contain chicken/poultry by-product meals—in significant amounts. Further, many Blue Buffalo products contain corn and artificial preservatives, also directly contrary to the representation that Blue Buffalo products "NEVER" contain these ingredients.



Source: Blue Buffalo website 4/22/2014

27. Consumers of pet food and related products are becoming increasingly ingredient conscious and are being more particular than ever about the types of foods that they feed their pets. Indeed, consumers rely on ingredient claims and other statements about nutritional value and food quality when deciding the brand of food to feed their pets. Many consumers have

chosen to purchase—and pay a substantial premium for—Blue Buffalo brand products over other leading brands because of the false nutritional statements and promises made by Blue Buffalo, including, for example, false statements that its products: (i) do not contain chicken/poultry by-product meals; and (ii) contain "none" of the ingredients that ingredient-conscious consumers would not want; when in fact, Blue Buffalo's products contain chicken by-product meals and other ingredients that Blue Buffalo itself advocates ingredient-conscious consumers should not want.

LifeSource Bits

28. Blue Buffalo has created what it calls "LifeSource Bits" that it represents as being "vitamins, minerals and antioxidants" that are allegedly "cold-formed" pieces of kibble included in its pet food. Blue Buffalo touts its LifeSource Bits as offering a series of special health benefits for pets.

The benefits of LifeSource Bits you find in every BLUE dry dog or cat food.

Cold-formed to retain their potency, BLUE LifeSource Bits are a precise blend of vitamins, minerals and antioxidants that are formulated to help support:

- Healthy oxidative balance
- Immune system health
- Life stage requirements

Help dogs and cats maintain a healthy oxidative balance

Virtually every day, our dogs and cats are exposed to environmental factors that can negatively impact their oxidative balance. And if their biological systems are not able to rebalance this oxidative stress, it can lead to cellular destruction and other serious health issues.

As antioxidants can play an important role in reducing oxidative stress, an increasing number of veterinarians are recognizing their importance in helping pets maintain a healthy oxidative balance. This is the science that led our nutritionists to formulate BLUE's LifeSource Bits with ingredients that are rich in antioxidants. These include:

- **Kelp**
- **Vitamin E**
- **Vitamin C**
- **Beta Carotene**
- **Vitamin A**
- **Blueberries**

Source: Blue Buffalo website 4/22/2014

29. In actuality, Blue Buffalo's "LifeSource Bits" do not contain enough nutrients to effectively deliver the claimed health benefits. Contrary to the "TRUE BLUE PROMISE," laboratory testing reveals that Blue Buffalo "LifeSource Bits" also contain chicken/poultry by-product meal and corn. LifeSource Bits in several of Blue Buffalo's "grain free" products contain rice hulls (which, of course, do not belong in a "grain free" product).

30. Likewise, Blue Buffalo falsely implies that its LifeSource Bits are superior in nutritional quality to vitamins, minerals, antioxidants and other ingredients included in other competing pet food products. For example, Blue Buffalo includes LifeSource Bits on the results page of its "True Blue Test," advertising LifeSource Bits as one of the qualities that allegedly makes Blue Buffalo's products superior to those of competitors without acknowledging that its competitors products may and/or do contain similar ingredients.

Source: Blue Buffalo website 4/22/2014

31. Once again, in actuality, the low level of nutrients in Blue Buffalo's "LifeSource Bits" do not render them superior to competing products.

32. Blue Buffalo also makes false and misleading statements implying that the "cold formed" process that it purportedly uses to create its LifeSource Bits is the only way to preserve the vitamins, minerals, antioxidants and enzymes contained in pet food and falsely asserts that its

competitors do not take steps to similarly preserve the nutritional qualities of their products. Blue Buffalo also makes statements that "other manufacturers process their foods with heat as high as 350° . . . [which] "can destroy the potency of many vitamins, minerals, antioxidants and important enzymes," while failing to disclose the reason why foods are processed with heat (*e.g.*, to kill harmful bacteria) and that, in fact, most of Blue Buffalo's products are processed using the same high heat methods. (*See, e.g.*, *id.*).

"Cold-Formed" Process

Recognized as a breakthrough in canine and feline health because of the multiple benefits they provide, LifeSource Bits are also a manufacturing breakthrough because they are "cold-formed" to preserve nutritional potency of the ingredients. BLUE is the ONLY brand of pet food to use this "cold-formed" process.

When you compare dog foods or compare cat foods, you will see that this "cold-formed" process is an important difference between BLUE and other brands that add antioxidants and vitamins. Other manufacturers process their foods with heat as high as 350°. High heat can destroy the potency of many vitamins, minerals, antioxidants and important enzymes. It's the same concept as when you cook vegetables at high heat—the longer you do, the more heat-sensitive nutrients are lost.

LifeSource Bits are manufactured separately at a lower temperature from the rest of the vitamins and antioxidants. This way, your pet can gain as many benefits as pos

Water-soluble vitamins are the most sensitive to heat. Nutritionists estimate that these their potency when exposed to high temperatures, while some, like vitamin C, can lose

BLUE LifeSource Bits contain eight water-soluble vitamins which benefit most from the

- **Vitamin B1** (Thiamin)
- **Vitamin B2** (Riboflavin)
- **Vitamin B12**
- **Vitamin C**
- **Folic Acid B9**
- **Niacin B3**
- **Biotin B7**
- **Pantothenic Acid B5**

Source: Blue Buffalo website 4/22/2014

33. Similarly, Blue Buffalo makes false and misleading statements that its LifeSource Bits contain certain levels of vitamins, minerals and nutrients to provide specific health benefits such as a "healthy skin and coat" and "healthy bones and tissue," when in fact, Blue Buffalo's LifeSource Bits do not contain the requisite levels of vitamins, minerals or nutrients to provide

the health benefits that Blue Buffalo alleges. Blue Buffalo also advertises that certain vitamins, minerals and nutrients alleged to be contained in its LifeSource Bits provide health benefits for which there is no scientific evidence.

Help support a pet's specific life stage requirements.

LifeSource Bits also contain ingredients that can help protect a pet's changing needs from youth through his mature years. These include:

- **Omega 3** and **Omega 6** Fatty Acids for healthy skin and coat
- **Yucca Schidigera Extract** for joint health
- **Taurine** for healthy eyes and heart
- **L-Lysine** for growth and development
- **Vitamin D** for healthy bones and tissue
- **Vitamin B12** for growth
- **L-Carnitine** for endurance and fat metabolism

Source: Blue Buffalo website 4/22/2014

34. Numerous other Blue Buffalo advertising claims relating to the LifeSource Bits in its pet food are false and misleading. For example, Blue Buffalo claims that its LifeSource Bits contain Taurine "for healthy eyes and heart." The LifeSource Bits, however, contain little or no Taurine. Likewise, Blue Buffalo touts Vitamin D in the LifeSource Bits "for healthy bones and tissue." But the LifeSource Bits actually have less Vitamin D than the remaining kibble component. Similarly, Blue Buffalo cites L-Carnitine in the LifeSource Bits "for endurance and fat metabolism." In actuality, there is little or no L-Carnitine in the Blue Buffalo LifeSource Bits. All in all, Blue Buffalo's LifeSource Bits are falsely advertised as having many qualities and benefits they simply do not have.

"Natural Ingredients"/ "NO Artificial Preservatives"

35. Blue Buffalo has made and is currently making statements and "promises" to consumers that its products contain "Only the Finest Natural Ingredients" and have "NO Artificial Preservatives."

BLUE uses only the finest natural ingredients and:

- NO chicken (or poultry) by-product meals
- NO artificial flavors, colors, or preservatives
- NO corn, wheat or soy, as they have been linked to allergic reactions in some pets

Source: Blue Buffalo website 4/22/2014

Source: Blue Buffalo website 4/22/2014

What's In Our Food and Why

BLUE foods consist of the finest natural ingredients combined in perfect balance for superior nutrition. These delicious, high-quality ingredients are the foundation of all of our products along with intensively researched vitamins, minerals, and antioxidants – each combination specifically modified for dogs, cats, lifestages, weight conditions, taste preference, and personal feeding choice.

Like us, dogs and cats require a balanced diet that is a combination of six nutrient classes

- Proteins
- Fats
- Carbohydrates
- Vitamins
- Minerals
- Water

Source: Blue Buffalo website 4/22/2014

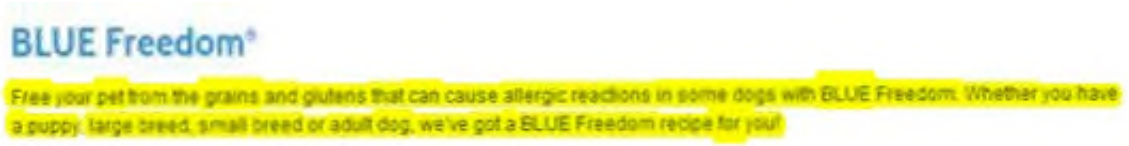
36. These statements and promises are repeated throughout Blue Buffalo's website, its national television commercials and other advertising materials. Blue Buffalo's employees also make verbal statements to consumers that Blue Buffalo's products contain "Only the Finest Natural Ingredients" and like statements.

37. Blue Buffalo's statements and promises that its products contain "Only the Finest Natural Ingredients" and have "NO Artificial Preservatives" are false and misleading because, among other things, Blue Buffalo's products contain chicken/poultry by-product meals that include artificial preservatives that are not present in chicken/poultry meal.

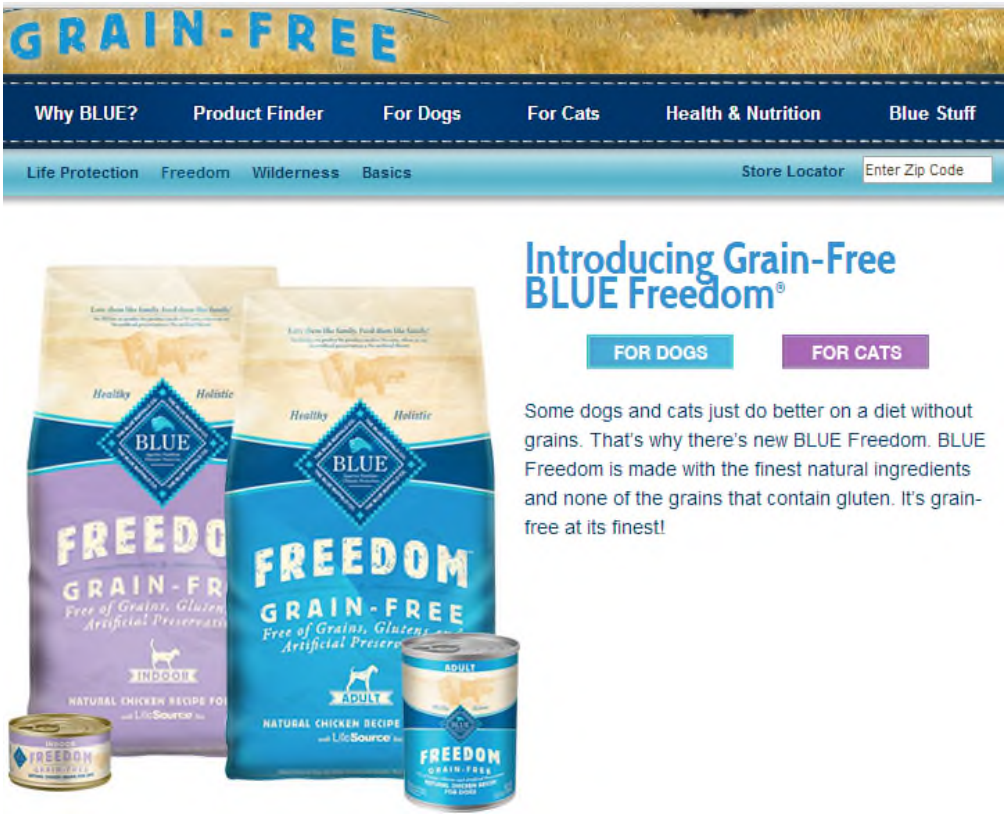
"Grain-Free"

38. Blue Buffalo advertises several of its products, including its "Freedom" and "Basics" lines, as being "grain free," often as part of the product name. Blue Buffalo also advertises that all of its products contain "no corn, wheat or soy."

39. Grain-free pet foods are desired by many consumers who believe that dogs and cats should be fed as carnivores because they may not get sufficient nutrients or have difficulty digesting grains. Blue Buffalo attempts to seize upon consumers' beliefs and advocates that not including "grains and glutens" in its products is beneficial because consuming grains and glutens "can cause allergic reactions."



Source: Blue Buffalo website 4/22/2014



Source: Blue Buffalo website 4/22/2014

Source: Blue Buffalo website 4/22/2014

Why is it so important that there is no corn, wheat or soy in BLUE products?

Corn, wheat and soy have all been identified as potential allergens for some dogs and cats.

▲ back to top

Source: Blue Buffalo website 4/22/2014

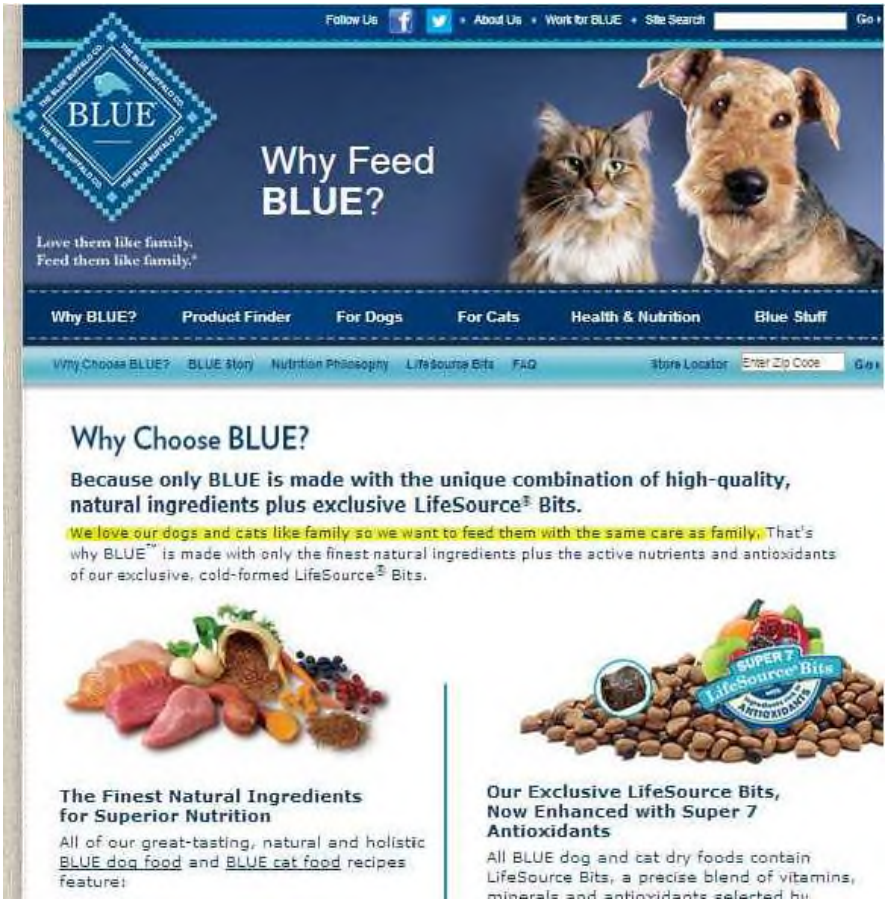
40. Blue Buffalo's statements that its products are "grain-free" and contain "no corn, wheat or soy" are, however, false and misleading as testing reveals that Blue Buffalo products indeed do contain these ingredients. Specifically, independent testing commissioned by Purina found grains (rice hulls and/or ground corn) in Blue Buffalo's LifeSource Bits, which are contained in all four Blue Buffalo "grain-free" products. These grains were found in concentrations of up to 3% by weight.

41. By falsely advertising its products as "grain free" when its products actually contain grains, Blue Buffalo is deceiving consumers who intend to purchase grain free products.

"Human-Grade" Pet Food

42. Blue Buffalo makes statements that its products are human-grade and fit for human consumption, and has adopted the slogan "*Love them like family. Feed them like family.*" to convey this message to consumers. (*See, e.g.*, Exhibits C, E).

Source: Blue Buffalo website 4/22/2014



Source: Blue Buffalo website 4/22/2014

43. Blue Buffalo's statements that its products are human-grade and/or fit for human consumption are materially false because Blue Buffalo's products contain ingredients such as chicken/poultry by-product meals that are not human grade.

BLUE BUFFALO'S PRIOR DECEPTIVE PRODUCT LABELING AND ADVERTISING PRACTICES

44. In addition to the recent NAD dispute, Blue Buffalo has been no stranger to legal disputes centered on its deceptive advertising practices. In 2008, Blue Buffalo's nutritional boasts were challenged by a competitor before the NAD. That challenge resulted in, among other things, the NAD instructing Blue Buffalo to "discontinue its 'no animal by-products' claims when made in reference to pet foods containing fish meal, lamb meal and/or liver." (*See* NAD Case #4892 at 10-11, decided July 31, 2008, attached hereto as Exhibit G). In response to the NAD's recommendations related to its "no animal by-products" claims, Blue Buffalo has switched to an equally untrue claim that its products "NEVER have Chicken (or Poultry) By-Product ***Meals***."

45. The NAD also recommended that Blue Buffalo discontinue the "*like you feed your family*" portion of its slogan in connection with its non-organic product lines. (*Id*. at 14). Despite submitting voluntarily to the NAD's jurisdiction, Blue Buffalo did not make any material changes to its slogan in response to the NAD's recommendation and continues to deceptively market all of its products using its "Love them like family. Feed them like family." slogan. (*See, e.g.*, Exhibits C, E).

46. Rather than revise its advertising to remove deceptive content, Blue Buffalo has actually increased the misleading and deceptive nature of its advertising over the years. It is time for Blue Buffalo's false and deceptive advertising and marketing practices to end.

COUNT I
(False Advertising Under the Lanham Act, 15 U.S.C. § 1125(a))

47. Purina repeats and incorporates herein each and every allegation set forth in paragraphs 1 to 48 of this Complaint.

48. Blue Buffalo on or in connection with goods used in interstate commerce, made and continues to make false statements of fact and false representations of fact as to the nature, characteristics and/or qualities of its goods. Blue Buffalo has also made false statements of fact and representations of fact as to the goods of its competitors.

49. Blue Buffalo's false statements of fact and false representations of fact were made and continue to be made in commercial advertising, product promotions, and on product labels in a manner material to the public's decision to purchase Blue Buffalo's products rather than those of competitors, including Purina.

50. Such acts by Blue Buffalo constitute false statements, descriptions and representations of fact in commercial advertising and product promotion and are a violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

51. As a proximate result of Blue Buffalo's willful conduct, Purina has suffered irreparable harm, including irreparable harm to its reputation and goodwill and the reputation of its products, for which it has no adequate remedy at law, and Purina will continue to suffer irreparable injury unless and until Blue Buffalo ceases making false statements in connection with and to promote its products.

52. Unless Blue Buffalo's activities cease, Blue Buffalo will unjustly profit from sales of its products that are based on consumer reliance on the false statements that it has made and is making about its products. Purina has suffered and will continue to suffer economic harms, including losses in sales as proximately caused by Blue Buffalo's actions.

53. Purina has suffered and will continue to suffer economic harms and injuries to its commercial interests, including losses in sales, which have been and are being proximately caused by Blue Buffalo's actions and misrepresentations.

54. Pursuant to 15 U.S.C. § 1117, Purina is entitled to actual damages to be determined at trial, to have such damages trebled, to disgorgement of Blue Buffalo's profits, and to be reimbursed for the costs of this action and its related attorneys' fees.

COUNT II
(Commercial Disparagement Under the Lanham Act, 15 U.S.C. § 1125(a))

55. Purina repeats and incorporates herein each and every allegation set forth in paragraphs 1 to 56 of this Complaint.

56. Blue Buffalo on or in connection with goods used in interstate commerce, made and continues to make false comparisons of its products as compared to those of competitors, including Purina.

57. Blue Buffalo's false statements of fact and false comparisons were made and continue to be made in commercial advertising, product promotions and on product labels in a manner material to the public's decision to purchase Blue Buffalo's products over those of competitors, including Purina.

58. Such acts by Blue Buffalo constitute false statements, descriptions and representations of fact in commercial advertising and product promotion and are a violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

59. As a proximate result of Blue Buffalo's willful conduct, Purina has suffered irreparable harm, including irreparable harm to its reputation and goodwill and the reputation of its products, for which it has no adequate remedy at law, and Purina will continue to suffer

irreparable injury unless and until Blue Buffalo ceases making false statements and comparisons in connection with and to promote its products pursuant to 15 U.S.C. § 1116.

60. Unless Blue Buffalo's activities cease, Blue Buffalo will unjustly profit from sales of its products that are based on consumer reliance on the false and deceptive comparisons that it has made and is making about its products as compared to those of competitors, including Purina.

61. Purina has suffered and will continue to suffer economic harms and injuries to its commercial interests, including losses in sales, which have been and are being proximately caused by Blue Buffalo's actions and misrepresentations.

62. Pursuant to 15 U.S.C. § 1117, Purina is entitled to actual damages to be determined at trial, to have such damage trebled, to disgorgement of Blue Buffalo's profits and to be reimbursed for the costs of this action and its related attorney's fees.

COUNT III
(Common Law Unfair Competition)

63. Purina repeats and incorporates herein each and every allegation set forth in paragraphs 1 to 64 of this Complaint.

64. Blue Buffalo has engaged in and continues to engage in unfair competition by making false, misleading and deceptive statements about its products while disparaging the products of competitors. Blue Buffalo's misleading and deceptive statements have caused and continue to cause consumers to purchase Blue Buffalo's products over the products of competitors, including Purina.

65. Blue Buffalo acted and continuities to act in bad faith in making claims about its products that it knew and knows to be materially false and deceptive.

66. Blue Buffalo's acts constitute false advertising and unfair competition under the common law of the State of Missouri.

COUNT IV
(Common Law Unjust Enrichment)

67. Purina repeats and incorporates herein each and every allegation set forth in paragraphs 1 to 68 of this Complaint.

68. Blue Buffalo has enjoyed substantial profits from the sale of its products to consumers who purchased Blue Buffalo's products over the products of competitors based on false statements made by Blue Buffalo, including that Blue Buffalo's products do not contain chicken/poultry by-products meals when its products in fact do. These statements made by Blue Buffalo include false comparative statements about the ingredients and nutritional values of Blue Buffalo's product as compared to those of competitors, including Purina.

69. Blue Buffalo would not have made such sales or earned the profits therefrom but for the misrepresentations and false statements that it made and continues to make about its products. On information and belief, Blue Buffalo's profits were further inflated via cost savings for less expensive ingredients than advertised. For example, poultry by-product meal is generally less expensive than the "real meat" that Blue Buffalo references in its advertising.

70. Blue Buffalo's gain from sales of falsely advertised products and disparagement of competitors came at the expense of competitors, including Purina.

71. Blue Buffalo has been unjustly enriched as a result of its false statements and misleading advertising practices, and under principals of equity should not be permitted to retain these unjustly acquired gains.

PRAYER FOR RELIEF

WHEREFORE, Purina prays that the Court enter a judgment against Blue Buffalo:

(a) Finding that, by the acts complained of above, Blue Buffalo has engaged in false advertising in violation of 15 U.S.C. § 1125(a);

(b) Finding that, by the acts complained of above, Blue Buffalo has engaged in false advertising in violation of Missouri common law;

(c) Finding that the acts complained of above were willful;

(d) Finding that Blue Buffalo has been unjustly enriched as a result of its false advertising and false comparative advertising tactics;

(e) Enjoining Blue Buffalo, its agents, servants, employees, officers, and all persons in active concern and participation with Blue Buffalo from making false and/or misleading statements about its products, including statements that are likely to lead consumers to believe that its products are free from by-product meals or are of a human-grade quality;

(f) Enjoining Blue Buffalo, its agents, servants, employees, officers, and all persons in active concern and participation with Blue Buffalo from making false and/or misleading statements about its products as compared to those of competitors, including that its products are more nutritious, free from chicken/poultry by-product meals or are of a human-grade quality;

(g) Requiring Blue Buffalo to engage in corrective advertising, including advertising that informs consumers that Blue Buffalo's products are not free from by-product meals and are not of a human-grade quality;

(h) Requiring Blue Buffalo to destroy all product packaging and all other materials displaying false statements, including that its products are free from by-product meals and are of human-grade quality (*e.g.*, the "*Feed them like family*." slogan);

(i) Declaring that this is an "exceptional case" due to the willful nature of Blue Buffalo's conduct;

(j) Ordering Blue Buffalo to account to Purina for all gains, profits, savings and advantages obtained by Blue Buffalo as a result of its false advertising and unfair competition and disgorge to Purina restitution in the amount of such gains, profits, savings and advantages;

(k) Ordering Defendant to pay Purina:

i. Treble actual damages, costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1117;

ii. Blue Buffalo's profits and cost savings from sale of its products resulting from its false advertising practices; and

iii. Pre-judgment and post-judgment interest.

(l) Awarding Purina such other and further relief as this Court may deem just and proper.

JURY DEMAND

Purina hereby demands a trial by jury.

Dated: May 6, 2014 Respectfully submitted,

NESTLÉ PURINA PETCARE COMPANY

/s/ *David A. Roodman*

Carmine R. Zarlenga *(Lead attorney, pro hac vice to be filed)*
MAYER BROWN LLP
1999 K Street NW

Washington, DC 20006
Telephone: (202) 263-3227
Facsimile: (202) 263-5227
czarlenga@mayerbrown.com

Richard M. Assmus *(pro hac vice to be filed)*
Kristine M. Young *(pro hac vice to be filed)*
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606
Telephone: (312) 782-0600
Facsimile: (312) 701-7711
rassmus@mayerbrown.com
kyoung@mayerbrown.com

David A. Roodman, 38109MO
BRYAN CAVE LLP
211 North Broadway #3600
St. Louis, Missouri 63102
Telephone: (314) 259-2000
Facsimile: (314) 259-2020
daroodman@bryancave.com

EXHIBIT A

Case #5696 *(03/11/14)*
BLUE BUFFALO COMPANY, LTD.
BLUE™ Brand Pet Food Products
Challenger: *Hill's Pet Nutrition, Inc.*
Product Type: *Pet Products*
Issue: *Nutrition Claims/Disparagement Claims*
Disposition: *Substantiated In Part/Modified-Discontinued In Part*

- NAD carefully scrutinizes denigrating claims to ensure that they are truthful, accurate, narrowly drawn and that they do not falsely disparage a competitor's product.

Basis of Inquiry: Nutrition and disparagement claims made in television, Internet, print and mobile advertising by BLUE Buffalo Company, Ltd., manufacturer of BLUE ™ Brand Pet Food Products, were challenged by Hill's Pet Nutrition, Inc., a competing manufacturer of pet food products. The following claims formed the basis of NAD's inquiry:

Express Claims:

"It takes a lot to get me mad, but it really hit me when I realized that his big name dog food had chicken by-product meal as a first ingredient—not real meat. It felt like they fooled me, so I switched Leo to BLUE Buffalo."

"If you are feeding one of the big-name brands, chances are you're in for a big let-down."

"Pet parents are learning the truth about the ingredients in some of the leading dog food brands. Don't be fooled by the big name dog food brands."

"All cat parents want their little girls to love their food. But what if you don't love the natural ingredients in them? That's why cat lovers are turning to BLUE Buffalo, because it has the natural ingredients you want, combined with the delicious taste she wants. And real meat is always first."

"I used to feed my little guy a big name brand that was formulated for a toy breed's needs, but I didn't want him eating chicken by-product meal, so I switched to BLUE."

"These big name cat food companies are out there telling people they're made with the best ingredients, when they're not…Don't make me think I'm feeding her something high-quality when I'm not."

"When parents learn the truth about big name cat foods, they switch to BLUE Buffalo. All BLUE Life Protection foods are made with the finest natural ingredients, with real meat first."

"Are big name cat foods fooling you? You probably didn't know that many well-known cat foods contain things like chicken by-product meal and corn gluten. BLUE, on the other hand, is made with the finest ingredients…"

"True BLUE Test" comparison chart between BLUE and Hill's Science Diet dry dog and cat foods which communicates the following:

All Hill's Science Diet dry pet foods contain chicken by-product meal.

No Hill's Science Diet dry pet foods include both fruits and vegetables.

No Hill's Science Diet dry cat foods feature "real" meat (such as chicken or fish) as the first ingredient.

Hill's Science Diet products do not contain vitamins, minerals, and antioxidants that support immune health, satisfy pets' life-stage requirements, and foster a healthy oxidative balance (either at all or to the same degree as the ingredients in BLUE).

Implied Claims:

Competing pet food brands use low quality ingredients in their pet foods products.

Competing pet food brands use chicken by-product meal instead of real meat in their pet food products.

Challenger's Position:

I. *Express Claims*: "It takes a lot to get me mad, but it really hit me when I realized that his big name dog food had chicken by-product meal as a first ingredient – not real meat. It felt like they fooled me, so I switched Leo to BLUE Buffalo"; "If you are feeding one of the big-name brands, chances are you're in for a big let-down"; "Pet parents are learning the truth about the ingredients in some of the leading dog food brands. Don't be fooled by the big name dog food brands" and related express and implied claims.

The challenger explained that challenged advertisements follow a similar format—they feature an actress portraying a pet owner, with her pet, who expresses her shock and disappointment with "big name pet foods" because they contain chicken by-product meal, a discovery which leads her to switch to BLUE. Consumers are then invited to compare their pet's food to BLUE pet food by taking the "True BLUE Test," an online comparison tool that allows consumers to choose one or more pet foods (including Hill's Science Diet products) to compare against BLUE dog and cat food based on five ingredient factors.[1]

[1] The URLs to which consumers are directed are as follows: CompareBlue.com; CompareYourBrand.com; CompareBlueCat.com; and TrueBlueTest.com. A prior version of the chart was worded differently but included the same ingredient factors as well as another (LifeSource Bits [Cold-Formed Nutrients & Antioxidants]) which was since been removed from the chart. While the challenger noted that the removal of LifeSource Bits from the

The challenger asserted that the challenged advertisements all convey the same falsely disparaging and inflammatory message—that "big name" pet food manufacturers (including Hill's) are actively try to conceal the fact that they include chicken by-product meal (instead of real meat) as the first ingredient.[2] The challenger argued that the advertiser is free to make truthful monadic claims about its ingredients or draw properly-tailored distinctions between the ingredients in BLUE and those in specific competing products. However, it cannot make inaccurate, brand-wide comparisons implying that all (or almost all) products from every major competitor (including Hill's Science Diet) contain ingredients such as chicken by-product meal. The challenger noted that the advertiser's reference to focus group data, which it claims shows that consumers feel deceived or betrayed, is irrelevant to support the challenged *objective* claims regarding competitors' deceptive practices. Even if it were relevant, the challenger maintained that none of negative reactions refers to Science Diet so this evidence is inapplicable as to Hill's. The challenger also dismissed the advertiser's contention that the challenged advertisements simply communicate consumers' surprise (as opposed to anger or deception) as to big-name brands' ingredients given that the latter message is clearly communicated in both voiceover commentary and print statements.[3]

II. "True BLUE Test" comparison chart between BLUE and Hill's Science Diet dry dog and cat foods.

The challenger explained that the "True BLUE Test" is an online comparison tool that allows consumers to compare their dog or cat's food brand (or other brands) to BLUE dog and cat food based on five factors: 1) ALWAYS Has Real Meat as the First Ingredient; 2) ALWAYS Includes Veggies and Fruit; 3) NEVER Has Chicken (or Poultry) By-Product Meals; 4) NEVER Has Artificial Colors, Flavors or Preservatives; and 5) NEVER has Corn, Wheat or Soy. After selecting a brand(s), consumers are taken to the test results where they can then click on a mouse-print hyperlink at the bottom of the chart for more information.[4] Upon clicking on the hyperlink, the "True BLUE Test Criteria" pop-up window appears, explaining the criteria for receiving a checkmark for a given category and the products in each brand against which BLUE products are compared. Even if most of a brand's products fall within the specified category, if only one does not, a brand will not receive a checkmark.[5] BLUE Buffalo receives bold

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comparison chart was appropriate, it argued that references to them should be removed wherever they continue to appear.

[2] The challenger argued that even if the advertiser was claiming that Science Diet products *might* contain chicken by-product meal, the claim would nonetheless be misleading because the advertiser cannot rely on the fact that certain competitive products do contain chicken by-product meal to support the suggestion that consumers should be wary of *all* Science Diet products for that reason. *Citing* Halo, Purely for Pets, Inc. (HALO Spot's Stew), Report #5423, *NAD/CARU Case Reports* (February 2012). Science Diet is among the products referenced in the True Blue Test that consumers are invited to take at the end of the television commercial.

[3] E.g., "Are the big name dog foods fooling you? You probably didn't know that many well-known dog foods contain things like chicken by-product meal"; "It takes a lot to get me mad, but it really hit me when I realized that his big name dog food had chicken by-product meal as a first ingredient—not real meat."

[4] "For detailed comparison information, click here."

[5] For example, for a dog or cat food brand to receive a checkmark in the "Includes Veggies & Fruit" category, all of a brand's products must contain both fruits and vegetables. The challenger maintained that only one competitive brand received three checkmarks, with most brands receiving one or no checkmarks.

checkmarks under all five factors in every instance compared to competing brands which receive no (or, at most, only a few) checkmarks, and the checkmarks they receive are noticeably smaller in size and fainter in color than those accorded to BLUE. The challenger noted that the language used in connection with the True BLUE Test makes clear that the checkmarks refer to the overall quality of a pet food.[6]

The challenger argued that the terms "always" and "never" in connection with each of the categories (e.g., "ALWAYS Includes Veggies and Fruit") reasonably communicate the opposite of the meaning of the headings if a competing brand does not receive a checkmark—for example, the absence of a checkmark for the "ALWAYS Includes Veggies and Fruit" factor reasonably communicates that the brand *never* includes veggies and fruit in any of its products. Similarly, the absence of a checkmark for "NEVER has Chicken (or Poultry) By-Product Meal" reasonably conveys that the brand *always* includes chicken (or poultry) by-product meal in all its products. The challenger explained that since late 2012, it reformulated the vast majority of its Science Diet dog and cat foods to align its formulas with consumer preferences and that in so doing, it removed chicken by-product meal as an ingredient from these products (specifically from 27 out of the 28 Science Diet canine dry products and from 15 out of 18 of the Science Diet feline dry products). Further, 22 of the 28 Science Diet canine dry products and 14 of the 18 Science Diet feline dry products include "real" meat (either real chicken or fish) as their first ingredient. Moreover, 36 out of the 46 dry dog and cat foods contain fruits and vegetables. Accordingly, Hill's argued that the aforementioned takeaways as they pertain to itself are unsupported.[7]

The challenger also maintained that the "True BLUE Test Criteria" pop-up window is out-of-date because it includes Hill's Science Diet products which have been discontinued.[8] The challenger also argued that the disclosure, which explains each category and the products that form the basis of comparison, does not comport with the FTC's guidelines for effective online disclosures for the following reasons: 1) it is not clear and conspicuous because it appears in a separate roll-over window with a generically-labeled hyperlink ("Learn more") that does not inform consumers of the importance of the window's contents; and 2) even if consumers consult the roll-over window, the explanation of the chart's basis of comparison is shown at the very bottom of the long, text-heavy window which consumers are unlikely to read.[9] The challenger argued that even if the disclosure were clear and conspicuous, it impermissibly contradicts the charts' main message that Science Diet includes chicken by-product meal throughout its line of products. In addition, the challenger asserted that the pop-up window includes falsely disparaging claims referring to "big name brands" using "lower quality ingredients like chicken by-product meal" as opposed to BLUE Buffalo which uses "only the highest quality ingredients

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[6] E.g., "Are you surprised by the results?...The goal of the True BLUE Test is to give you a better understanding of what really makes up a healthy dog [or cat] food. And as the results show, the leading brands probably fall short of what you should expect from your dog's [or cat's] food."

[7] The challenger also noted that the four Science Diet dry pet foods that include chicken by-product meal will be reformulated or discontinued by the end of the first quarter of 2014.

[8] The following Science Diet products have been discontinued: 1) Science Diet Advanced Protection Senior (dog food); 2) Science Diet Adult Chicken & Rice Recipe (cat food); and 3) Science Diet Advanced Protection Senior 7+ (cat food).

[9] The text in the mobile version is also shown in mice type rendering it unreadable.

in each and every one of our foods, starting with meat, poultry and fish." The advertiser referred to a prior NAD case in which NAD determined that BLUE Buffalo cannot substantiate the message that its products or ingredients are higher in quality or are better for pets than competing pet foods.[10]

The challenger also argued that the advertiser's use of faint checkmarks for competing brands juxtaposed against the bold checkmarks it gives itself falsely implies that even if competitors' products have the same ingredients as BLUE pet food products, they offer *less* of those ingredients or are otherwise inferior. The challenger asserted that the checkmarks should be uniform for BLUE and competing brands.

Advertiser's Position:

I. *Express Claims*: "It takes a lot to get me mad, but it really hit me when I realized that his big name dog food had chicken by-product meal as a first ingredient – not real meat. It felt like they fooled me, so I switched Leo to BLUE Buffalo"; "If you are feeding one of the big-name brands, chances are you're in for a big let-down"; "Pet parents are learning the truth about the ingredients in some of the leading dog food brands. Don't be fooled by the big name dog food brands" and related claims.

The advertiser argued that the results of its extensive market research reveal that many pet owners prefer real meat as the first ingredient of their pet food and do not want their pet's food to contain any chicken or poultry by-product meals.[11] The advertiser argued that its advertising truthfully communicates the following: 1) consumers do not know as much about their pet food ingredients as they should; 2) consumers should compare the ingredients in the pet food they are currently using to those in BLUE pet food products; and 3) when they do compare the

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[10] *Citing* Blue Buffalo, LLC (BLUE Pet Food), Report #4892, *NAD/CARU Case Reports* (July 2008).

[11] The advertiser referred to market research it commissioned, submitted to NAD on a confidential basis, which reveals the following: 1) the biggest brands by market share also have the highest levels of consumer awareness; 2) pet owners are willing to pay a premium for a product that included meat as the first ingredient and/or contained no chicken by-product meals; 3) based solely on the review of unbranded ingredient lists, pet owners generally agree that the better brand is one which uses the higher-quality ingredients used by Blue Buffalo and that they overwhelmingly prefer that brand based solely on the ingredients (specifically, deboned chicken, chicken meal, whole ground brown rice, whole ground barley and oatmeal). The report also indicated that most consumers believe that the pet food they are currently using is superior to other pet food products and of these, most shop at pet specialty stores. As for the focus group testing, it was conducted by RazorFocus over the span of 2011-13. Participants were asked a series of questions about their pets, pet food and reasons for choosing the pet food. The facilitator presented one participant with a bag of the big-name pet food brand that the participant had identified as his/her current pet food and a bag of BLUE to a participant who identified BLUE as his/her current pet food. When the participants were asked to read the ingredient panels aloud to the group, the participants were not only surprised to learn that the ingredients in their big-name pet food of a lesser quality, but as the videos show, they expressed shock, dismay and anger as well. The advertiser also noted that it offers coupons for BLUE products to pet owners who take the True Blue Test and that there is a higher rate of redemption with its coupons than for non-BLUE users which indicates that consumers prefer the ingredients in BLUE products over those in competing big-name pet food products.

ingredients, they will be surprised by what they learn.[12] The advertiser maintained that the surprised and angry reactions of the actors constitute puffery and that no consumer would reasonably expect BLUE Buffalo to substantiate how many consumers are surprised/angry when they view any given ingredient list or the magnitude of that surprise/anger. The advertiser, noting that it did not include Science Diet packaging in its commercials, rejected the challenger's contention that the commercials convey that Hill's is "fooling" consumers. The advertiser asserted that the challenger has failed to provide any consumer perception evidence demonstrating that the challenged advertisements communicate that all (or nearly all) of Hill's Science Diet products contain chicken by-product meals.[13]

II. "True BLUE Test" comparison chart between BLUE and Hill's Science Diet dry dog and cat foods.

The advertiser maintained that its True BLUE Test is an interactive and engaging product comparison tool that allows users to compare BLUE to competing brands based on the ingredients each uses in its entire product line. The advertiser explained that a brand will get a checkmark in the specified column *if and only if* it meets the specified criterion across the *entire* product line. Consumers can also find out which specific formulations from a particular brand were evaluated. The advertiser asserted that it should be free to make the following truthful, unqualified and undisputed claims (as reflected in its comparison chart) concerning the high-quality and more expensive ingredients in its products: 1) that *all* BLUE pet foods include chicken, fish or lamb as the first ingredient; 2) that *all* BLUE pet foods include fruits and vegetables; 3) that *no* BLUE pet foods include chicken or poultry by-product meals; and 4) that *no* BLUE pet foods include corn, wheat or soy proteins (glutens). The advertiser maintained that it is also undisputed that *none* of the competing pet food brands can make any of these unqualified claims about their products. As to the challenger's Science Diet products, the advertiser argued that the following is undisputed: 1) that some, but not all, contain real meat as the first ingredient; 2) that some, but not all, contain vegetables and fruits; 3) that some contain chicken by-product meals; and 4) some contain corn, wheat or soy. The advertiser noted that while the challenger has reformulated, and continues to reformulate, its products to remove chicken by-product meals, certain products in its Science Diet line currently contain chicken by-product meals.

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[12] The advertiser referred to dog and cat food market share data from Euromonitor International which shows that the dog food brands with greater than five percent U.S. market share for 2012 were as follows: 1) Iams; 2) Purina Beneful; 3) Purina Dog Chow; 4) Pedigree; 5) Hill's Science Diet; 6) Purina ONE; and 7) Kibbles 'n' Bits. Euromonitor International's report for cat food brands with greater than five percent U.S. market share for 2012 were as follows: 1) Purina Friskies; 2) Iams; 3) Meow Mix; 4) Purina Cat Chow; 5) Purina ONE; and 6) Hill's Science Diet.

[13] The advertiser also argued that the challenger's reliance on the Halo case is misplaced. *See, infra*, at note 2. The advertiser explained that in that case, NAD determined that the implied claim centered on the notion that because certain ingredients (e.g., chicken by-product meal) could legally contain 4D poultry, products which contain those ingredients may also contain 4D poultry. The advertiser in that case offered no evidence that Science Diet contained 4D poultry. Here, the advertiser averred, it refers to chicken by-product meal because consumers prefer not to have it as in ingredient in their pet's food, and it is entitled to explain how BLUE products differ by excluding this ingredient from all of its products.

Challenger's Criticisms

1. Brand Comparisons

The advertiser maintained that the challenger's criticism of the True BLUE Test as being inherently inaccurate and deceptive because it compares brands as a whole rather than individual products is unfounded. For example, the advertiser argued that it would be false and misleading on its part to accord a checkmark to the challenger because only some of its products contain chicken or poultry by-product meals given that a brand receives a checkmark for the "NEVER has Chicken (or Poultry) By-Product Meals" column only if *none* of its products contains chicken or poultry by-product meals. The advertiser asserted that the absence of a checkmark does not reasonably convey that all Science Diet products contain chicken or poultry by-product meal. Similarly, the absence of a checkmark for other categories (e.g., "ALWAYS Includes Veggies and Fruits") does not reasonably convey that Science Diet products do not contain the specified ingredients in any of their products.

The advertiser noted that while it disagrees with the challenger's position, it has voluntarily agreed to 1) further explain that each criterion is unqualified by adding text which is triggered when a user rolls over the "Learn More" hyperlink directly adjacent to "How does your brand compare"[14]; 2) replace the word "high-quality" for "healthy" in the sentence "The goal of the True BLUE Test is to give you a better understanding of what really makes up a healthy dog

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[14] Why Compare Brands?

Choosing the right food for your dog is an important decision, so it makes good sense to **compare the ingredients** before selecting a brand.

At Blue Buffalo we consider our dogs to be family members so we use only the **highest quality ingredients in each and every one of our foods**, starting with meat, fish or poultry as the first ingredient.

Other pet food, including some of the biggest name brands, don't feel the same the same way we do and use lower quality ingredients like chicken by-product meal or ground corn. There are even **well-known brands who use higher quality ingredients in some of their foods and lower quality ingredients in others**, without making the difference clear to dog parents…talk about confusing!

The fact that this disparity in ingredient quality is often hidden or not addressed in packaging or advertising is why we created the True BLUE Test. All dog foods are not created equal, and dog parents who are concerned about ingredient quality deserve to know the truth.

So, in the True BLUE Test, "always" means always, and "never" means never. If a brand uses chicken by-product meal in some of its products, but not in others, it doesn't get a check. If a brand uses meat first in some, even most, of its foods, but not in all, it doesn't get a check. So, instead of having to research a brand's many choices to find out that you can feel good about feeding your furry friend, **you know exactly what you're getting with BLUE-always.**

food"; and 3) update the list of Science Diet products on the "True BLUE Test Criteria" to delete discontinued products and add Hill's newly introduced Science Diet formulations.

2. Complete List of Formulations For Each Brand is Located on a Separate Webpage

The advertiser maintained that the inclusion of this detailed information is not a "disclosure" necessary to qualify or clarify the True BLUE Test but, instead, supplements the data in the True BLUE Test.

3. Faintness of the Checkmarks for Competing Brands

The advertiser disputed the challenger's contention that the fainter BLUE checkmarks given for a competing brand (compared to the darker BLUE checkmarks for BLUE) suggest that certain ingredients in the competing product are inferior to those found in BLUE. The advertiser reiterated that each criterion in the True BLUE Test is a "yes" or "no" proposition and further explained that the color of a checkmark is neither a measurement of the quantity or quality of a certain ingredient nor a correlation with any superiority claim when viewing the advertisement as a whole.

Decision:

I. *Express Claims*: "It takes a lot to get me mad, but it really hit me when I realized that his big name dog food had chicken by-product meal as a first ingredient – not real meat. It felt like they fooled me, so I switched Leo to BLUE Buffalo"; "If you are feeding one of the big-name brands, chances are you're in for a big let-down"; "Pet parents are learning the truth about the ingredients in some of the leading dog food brands. Don't be fooled by the big name dog food brands" and related claims.

It is undisputed that many consumers who have pets consider them to be family members and want to provide them exceptional nutrition as close to what they themselves would eat. Consequently, they will pay a premium for products that have real meat or fish as the first ingredient as well as fruits, vegetables and other natural ingredients. They consider meat by-products to be unsavory and, therefore, of questionable nutritional value. The advertiser's BLUE Buffalo line of products is designed with these consumers in mind by including real meat as the first ingredient, as well as fruits and vegetables, in all of their products and excluding other ingredients, such as fillers and meat by-products.

Advertisers are responsible for *all* reasonable interpretations of the messages conveyed by their advertising, not simply the messages they *intended* to convey.[15] While NAD has long recognized an advertiser's right to make literally truthful and accurate advertising claims, sometimes at the expense of its competitors, NAD also carefully scrutinizes denigrating claims to ensure that they are truthful, accurate, narrowly drawn and that they do not falsely disparage a

[15] USPLabs, LLC (Jack3d Products), Report #5576, *NAD/CARU Case Reports* (April 2013).

competitor's product.[16] NAD has reviewed advertising claims similar to those at issue in this challenge for both the advertiser's and other premium pet food products and it has made clear in its decisions in these cases that while companies can and should inform consumers about the composition of their pet food products (e.g., meat as the first ingredient in all of their products), they may not falsely disparage their competitors' products by communicating unsupported messages that these products are less healthy, safe or nutritionally inferior.[17]

This case includes television and print advertisements that follow a similar format. They feature consumers holding their pets as they express shock and anger because they believe they were "fooled" by "big name" dog and cat food companies when they discovered that their pet product's ingredients did not measure up to their expectations: "It takes a lot to get me mad, but it really hit me when I realized that his big name dog food had chicken by-product meal as a first ingredient – not real meat. It felt like they fooled me, so I switched Leo to BLUE Buffalo." The voiceover then explains that "[i]f you are feeding one of the big-name brands, chances are you're in for a big let-down." Consumers are then invited to take the "True BLUE Test" on the BLUE Buffalo website where they can compare various attributes of their brand's pet food to those of BLUE Buffalo. The print and broadcast advertisements show bold BLUE checkmarks for BLUE for every category in the test versus faint or no checkmarks (or, in the print advertisements, question marks) for a competing brand. The print and broadcast advertisements end with the tagline "Love them like family. Feed them like family."

NAD determined that the challenged advertisements reasonably convey the following messages: 1) that all major pet food companies—i.e., Hill's and, at a minimum, all of the other companies included in the True BLUE Test—are misleading their customers a) by actively concealing the truth about the ingredients in their products; and b) by positioning their products as being of high quality when, in fact, they are not because they include lesser quality ingredients, such as chicken by-product meals and corn gluten; and 2) that consumers should switch to BLUE because it only has the highest quality ingredients in its line of products (e.g., real meat as the first ingredient, as well as fruits and vegetables).

NAD was concerned about the accuracy of these implied messages for a number of reasons. First, it is unclear which pet food manufacturers form the basis of the advertiser's comparison given the highly fragmented pet food marketplace. There are many companies who sell their products exclusively in grocery stores or in big box retailers (e.g., Costco). There are other companies, like BLUE and Hill's, who sell their products exclusively in specialty stores (e.g., Petco, PetSmart). There are also companies who sell their products in *both* grocery/big box stores and specialty stores. Further, there are companies who sell products through veterinary channels. The companies in the True BLUE Test comparison are representative of the pet food marketplace. It is also undisputed that Hill's is among the "big name" pet food manufacturers to which the advertiser refers in the challenged advertisements as both companies directly compete with each other in the specialty store marketplace.

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[16] Unilever United States, Inc. (Dove® Deep Moisture Body Wash), Report #5599, *NAD/CARU Case Reports* (June 2013).
[17] Halo, Purely for Pets, Inc. (HALO Spot's Stew), Report #5423, *NAD/CARU Case Reports* (February 2012).

Second, the advertiser has not provided any evidence that "big name" pet food manufacturers (or, at the very least, the companies listed in the True BLUE Test which includes Hill's) are actively concealing the truth about the ingredients in their products. NAD determined that the advertiser's focus group research does not constitute reliable evidence that the competing pet food manufacturers are misleading their customers about the nutritional profile of their products. NAD has noted that while focus groups can provide information that is valuable to advertisers in evaluating public responses to advertising campaigns, they are not sufficiently reliable to support advertising claims.[18] In this case, the focus group research is of very limited value because the participants were not asked to view any advertising at all. Rather, the participants were asked which product(s) they feed their pets and why. One participant who is a BLUE customer was asked to read the ingredients in a BLUE product and a participant who purchased a competing product read the ingredients in that product.[19] The participants who purchased products other than BLUE were upset and surprised by the differences in the products' ingredients, specifically the inclusion of chicken by-product meal and fillers, such as corn gluten, in their products. While this focus group research may have been the impetus for the advertiser to encourage consumers to compare the ingredients in their products versus those in BLUE, it is not sufficient to support the implied message that competing pet food companies are deliberately concealing the truth about their ingredients from their customers.[20]

Third, while real meat is undisputedly a high quality ingredient and nutritious, the advertiser has not provided any evidence that meat by-product meal is *not* a high quality ingredient or that it is not nutritious, or that products which include meat by-product meal are less nutritious than BLUE's or similarly positioned products that do not. In fact, NAD has noted in prior decisions involving advertising for pet foods that chicken by-product meals are nutritious.[21] In addition, many of these "big name" companies, including Hill's, have many different product lines. Some (such as Hill's Science Diet) include meat as the first ingredient in almost all of their products. Moreover, some dogs and cats have allergies or sensitive stomachs which preclude eating foods which include meat, and no allowance is made for products designed for pets with dietary restrictions in any of the challenged advertisements.

For all of these reasons, NAD recommended that the advertiser modify the challenged advertisements to avoid any express or implied references to competing manufacturers "fooling" or otherwise misleading consumers because their products include chicken or other meat by-

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[18] Memorial-Sloan Kettering Cancer Center (Advertising for Health Care Facility), Report #3555, *NAD/CARU Case Reports* (June 1999).

[19] The competing brands that were the basis of the focus group research were as follows: Beneful, Iams, Fancy Feast, and Friskies.

[20] In addition, the advertiser's reference to its competitors' advertising as evidence that they overstate the nutritional value of their products' ingredients is not germane to this challenge. The advertiser is free to bring a challenge against Hill's or any other big name pet food manufacturer if it believes that its advertising claims are misleading. As to the advertiser's reference the higher rate of redemption with its coupons than for non-BLUE users as being indicative of consumers' preference of the ingredients in BLUE products over those in competing big-name pet food, NAD determined that there is no evidence as to the reason for the higher rate of redemption, although it noted that it could also be for financial reasons given that BLUE is a premium product.

[21] Halo, Purely For Pets, Inc. (Halo Spot's Stew), Report #5423, *NAD/CARU Case Reports* (December 2012) (noting that certain by-products are permitted by applicable guidelines in foods suitable, nutritious and safe for pets).

product meals or other ingredients they believe to be less nutritious. However, the advertiser is free to promote the high quality ingredients in its products and to encourage consumers to check the ingredient labels of their pet's food products to ensure that they make better informed purchasing decisions when buying food for their pets.

II. "True BLUE Test" comparison chart between BLUE and Hill's Science Diet dry dog and cat foods.

The True BLUE Test comparison chart is shown in a fleeting manner in the commercials after consumers are directed to compare the ingredients in their current dog or cat food to those in BLUE. The bold checkmarks for BLUE in each column are prominently shown. The print advertisement includes an older version of the comparison chart but also features checkmarks for BLUE for each category and question marks for each category as they relate to "your cat's [or dog's] food." BLUE's homepage includes a prominent cue inviting consumers to use the comparison chart – "Compare Your Brand: Take the True BLUE Test to see if the ingredients in your pet's food are as wholesome as you think."[22] Consumers can choose one or more brands to compare (each of the featured brands) against BLUE. The headline on the comparison page states "How does your brand compare?" with a hyperlink ("Learn More") appearing next to it. Below this headline are the five current bases of comparison: 1) ALWAYS has real meat as the first ingredient; 2) ALWAYS includes veggies and fruits; 3) NEVER has chicken (or poultry) by-product meals; 4) NEVER has artificial colors, flavors or preservatives; and 5) NEVER has corn, wheat or soy. Above the list of the brand is the following reference "Roll over or touch to expand" with an arrow pointing to the "Learn More" hyperlink shown below each basis of comparison.

NAD was concerned about the accuracy of the messages conveyed by the advertiser's ingredient comparison chart. While it is clear that the basis of comparison is on a brand-wide basis, and the advertiser explains what it means by the references to "always" and "never," the individual attributes are positioned as being present or absent in an absolute manner (*always* has real meat as the first ingredient; *never* has chicken [or poultry] by-product meals). As such, the absence of a checkmark in a given column for a competing brand reasonably conveys the inaccurate message that 1) that *all* of the products in the listed brand have undesirable ingredients (e.g., chicken by-product meal, corn gluten, artificial colors, flavors or preservatives); and 2) that *none* of products for the listed brand have certain other nutritious ingredients (meat as the first ingredient; veggies and fruit). The advertiser submitted nutritional information for dry dog and cat food products pertaining to certain competing brands, as well as for its own products. There are wide disparities in the nutritional profiles based on the given brand. For example, with respect to the question of meat as the first ingredient, some brands have no products that contain meat as the first ingredient but others have meat in 50 percent and, in some instances, over 90 percent of their products.[23] Similarly, a brand which does not receive a checkmark for the

[22] There is one hyperlink to compare your dog food and another below it to compare your cat food.

[23] For example, none of the nine Pedigree dog products has meat as the first ingredient whereas 17 out of the 34 Iams products do. As for the Hill's Science Diet dry dog food products, 78.5 percent of its dog products currently have meat as the first ingredient. For cat products, none of the seven Meow Mix products has meat as the first

category "ALWAYS includes veggies and fruits" may well have veggies and/or fruits in 99 percent of its products.[24] Consumers have no way of differentiating between a brand which does not have meat as the first ingredient in any of its products from a brand which has meat as the first ingredient in the vast majority of its products based on the comparison chart as it is currently constituted.

Another concern raised by the comparison chart is the manner in which the disclosures for each of the categories appear both online and in a mobile device. The FTC's revised .Com Disclosures make clear that "[d]isclosures that are an integral part of a claim or inseparable from it should not be communicated through a hyperlink" but that those that are lengthy can be included in a hyperlink provided "[t]he hyperlink…is clearly labeled to communicate the specific nature of the information to which it leads."[25] The FTC added that "[t]he text prompt should be tied to the disclosure to which it refers. General or vague statements, such as 'details below,' provide no indication about the subject matter or importance of the information that consumers will find and are not adequate cues."[26]

Here, the hyperlinks, shown next to the heading "How does your brand compare?" and directly underneath each category, are labeled "learn more" which are as vague as the "details below" hyperlink to which FTC cites as inadequate in its .Com Disclosures.[27] The bigger issue, however, is that the "Learn more" hyperlink does not operate as a hyperlink at all. Rather, the information in each hyperlink appears as a pop-up upon moving the mouse over the "learn more" hyperlink next to the "How does your brand compare?" heading or over each category. The disclosures can be read and understood in a clear and conspicuous manner in their entirety if one hovers over each category very slowly. However, if one hovers over all of the categories, or goes from one category to the next too quickly, the disclosures pop up in rapid succession making it very hard to read and understand each one. The .Com Disclosures advise against the use of pop-up disclosures because, among other things, "consumers may not read information in pop-up windows or interstitials because they immediately close the pop-ups or move to the next page in pursuit of completing their intended tasks, or because they don't associate information in a pop-up window or on an interstitial page to a claim or product they haven't encountered yet."[28]

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ingredient whereas 10 out of the 11 products in Purina One's products do. As for Hill's Science Diet dry cat food products, 77.7 percent of them have meat as the first ingredient.

[24] For example, while none of the Pedigree dry dog products contains fruit, eight out of the nine products contain vegetables.

[25] .Com Disclosures, http://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf, at 9-11. The FTC explains that "[t]he key considerations for evaluating the effectiveness of all hyperlinks are: the labeling or description of the hyperlink; consistency in the use of hyperlink styles; the placement and prominence of the hyperlink on the webpage or screen; and the handling of the disclosure on the click-through page or screen.)

[26] *Id.* at 9.

[27] *Id. See also* Chase Bank USA, N.A. (Chase Freedom Rewards Credit Card), Report #5679, *NAD/CARU Case Reports* (January 2014) (recommending that in space-constrained advertisements in which the advertiser uses hyperlinks to disclose material terms, the advertiser should modify the hyperlink [which currently reads "learn more"] to indicate the nature of the disclosures to which it is linking).

[28] .Com Disclosures, at 14.

A different disclosure issue arises when one accesses the True BLUE Test on a mobile device. The hyperlink works as it should next to the text "Compare your brand to BLUE and sign up to receive a $5 coupon." However, when one clicks on a brand to compare it to BLUE, the same categories appear on the left next to which is a "+" sign. The "+" sign may not alert consumers to the need to click on the "+" or the nature of the disclosure as pursuant to the .Com Disclosures.[29] However, NAD noted that once a consumer clicks on the "+" sign or the "Learn More" hyperlink, the disclosures are clear, conspicuous and easy to read without the need to scroll down to read them.[30]

Another concern raised by the comparison chart is the manner in which checkmarks for competing brands appear. Both online and on a mobile device, the checkmark for a competing brand is noticeably smaller and fainter than the checkmark accorded to BLUE for the same attribute. NAD addressed this issue in the Iams Brand Pet Food Products case.[31] In that case, the advertiser used a comparison chart to compare certain attributes of its pet food products against those of competing pet food manufacturers. NAD determined that the advertiser's use of a faint checkmark for the challenger's products, as compared to the bold checkmarks for the Iams products for the same attribute, reasonably conveyed the message that Iams is nutritionally superior and that for those ingredients which are contained in competing products, the competing products have have *less* of the ingredient.[32] The same holds true here. Consumers who view the chart could reasonably take away the message that the competing product receiving a smaller or fainter checkmark in a certain category is nutritionally inferior—for example, for the columns "ALWAYS has real meat as the first ingredient" and "ALWAYS includes veggies and fruits," the fainter checkmark reasonably conveys that the competing brand has *less* real meat as the first ingredient or *fewer* veggies and fruits than BLUE products. For the categories "NEVER has chicken (or poultry) by-product meals," "NEVER has artificial colors, flavors or preservatives" and "NEVER has corn, wheat or soy," the faint checkmark is potentially very confusing and contradictory as it reasonably communicates that the competing brand's products may contain some of the ingredients that the category conveys is absent.

As for the reference to "LifeSource Bits," NAD deemed its removal from the comparison chart to be necessary and appropriate given that only BLUE could receive a checkmark since LifeSource Bits (albeit not the antioxidants and other nutrients contained in it) are unique to BLUE. The advertiser refers to the inclusion of LifeSource Bits in its product below the chart as follows: "Only BLUE Has LifeSource® Bits, Now Enhanced with Super 7 Antioxidants. LifeSource Bits contain a precise blend of vitamins, minerals and antioxidants selected by holistic veterinarians and animal nutritionists. And now all BLUE Life Protection Formula dog foods feature LifeSource Bits that have been enhanced with our Super 7 package of powerful

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[29] *Id.* at 12 ("A symbol or icon might not provide sufficient clues about why a claim is qualified or the nature of the disclosure. It is possible that consumers may view a symbol as just another graphic on the page."); *Id* at A-22 (Example 19, illustrating a website that is optimized for mobile devices and how the information about the advertised service plan requirement and the hyperlink to the plan's prices are immediately adjacent to the camera price they qualify).

[30] The disclosure pertaining to the "Learn More" hyperlink now appears on a separate full screen, not on a smaller screen with the brands as the backdrop.

[31] P&G Pet Care (Iams Brand Pet Food Products), Report #5045, *NAD/CARU Case Reports* (July 2009).

[32] *Id.*

antioxidant-rich ingredients," and lists the ingredients and the benefits they confer.[33] In this context, NAD determined that the claims reasonably communicate that BLUE has a special blend of ingredients and explain the benefits conferred by the ingredients without conveying the inaccurate message that competing brands do not contain similar ingredients or confer similar benefits.[34]

Based on the foregoing, NAD recommended that the advertiser modify its comparison chart in the following manner: 1) specify the number of products which include or do not include certain ingredients (e.g., 17 out of the 34 Iams products have meat as the first ingredient) to ensure that the comparisons are truthful and accurate; 2) regularly monitor product offerings of competing brands to ensure that the basis of comparison is accurate; 3) modify its online disclosures by a) eliminating the rollover format of the disclosures in favor of hyperlinks provided the hyperlinks are modified to indicate the subject matter or importance of the information pursuant to the FTC's .Com Disclosures; or b) ensuring that the rollover disclosures do not appear in rapid succession such that they are difficult to read and understand; 4) modify its mobile disclosure by including text (instead of the "+" sign) to indicate the nature of the disclosure pursuant to the FTC's .Com Disclosures; and 5) ensure that the checkmarks appear in a uniform manner.

Conclusion:

NAD recommended that the advertiser modify its advertisements to avoid any express or implied references to competing manufacturers "fooling" or otherwise misleading consumers because their products include meat by-products based on the absence of evidence that meat by-products are inherently less nutritious or that products that include them are of lower nutritional quality than BLUE. However, the advertiser is free to promote the high quality ingredients in its products and to encourage consumers to check the ingredient labels of their pet's food products to ensure that they make better informed purchasing decisions when buying food for their pets.

As for the comparison chart, NAD recommended that the advertiser modify its comparison chart in the following manner: 1) specify the number of products which include or do not include certain ingredients (e.g., 17 out of the 34 Iams products have meat as the first ingredient) to ensure that the comparisons are truthful and accurate; 2) regularly monitor product offerings of competing brands to ensure that the basis of comparison is accurate; 3) modify its online disclosures by a) eliminating the rollover format of the disclosures in favor of hyperlinks provided the hyperlinks are modified to indicate the subject matter or importance of the information pursuant to the FTC's .Com Disclosures; or b) ensuring that the rollover disclosures do not appear in rapid succession such that they are difficult to read and understand; 4) modify its

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[33] The ingredients are apples, blackberries, blueberries, cranberries, pomegranate, pumpkin, and spinach and the advertiser states that these ingredients help support immune system health, life stage requirements, and healthy oxidative balance. The television commercial refers to the LifeSource Bits as follows. "Only Blue has LifeSource Bits, a precise blend of antioxidants and nutrients."

[34] *See, e.g.,* Abbott Nutrition (Similac Advance and Similac Sensitive), Report #5369, *NAD/CARU Case Reports* (September 2011) (appreciating the advertiser's voluntary decision to discontinue using the claim "Only Similac has EarlyShield" in conjunction with references to specific product benefits [as opposed to ingredients]).

mobile disclosure by including text (instead of the "+" sign) to indicate the nature of the disclosure pursuant to the FTC's .Com Disclosures; and 5) ensure that the checkmarks appear in a uniform manner.

Advertiser's Statement:

Blue Buffalo is pleased with NAD's determination that it is free to promote the high quality of its ingredients, and to encourage consumers to check the ingredient labels of their current foods, thereby prompting consumers to make better-informed purchasing decisions. Blue Buffalo is further pleased that NAD found its promotion of its exclusive LifeSource Bits reasonably conveys that BLUE contains a special blend of nutritious, high-quality ingredients, and that such promotion in no way disparages Blue Buffalo's competitors.

Blue Buffalo respectfully disagrees with the remainder of NAD's finding. In particular, Blue Buffalo maintains that none of its ads suggest to reasonable consumers that competing brands are actively trying to conceal their ingredients, including chicken or poultry by-product meals, from consumers.

Blue Buffalo is particularly disappointed with NAD's recommendations regarding its long-standing True Blue Test. Blue Buffalo believes it has the right to compare its BLUE line of pet foods to other brands, and to truthfully communicate to consumers which lines do or do not contain certain ingredients *across the entire product line*. Blue Buffalo rejects the notion that the True Blue Test can only truthfully compare brands by using a format that states exactly how many formulations a given brand sells and how many of those formulations do or do not have the relevant characteristic. Blue Buffalo also rejects NAD's assertion that consumers will not understand the meaning of basic terms such as "NEVER" and "ALWAYS" in the context of the True Blue Test. For example, no reasonable consumer will understand the absence of a checkmark in the column titled "NEVER Has Chicken (or Poultry) By-Product Meals" to mean that the brand uses that ingredient in ***every one*** of its formulations.

Blue Buffalo steadfastly maintains that reasonable consumers understand the plain meaning of the language used in the True Blue Test, that the record contains no evidence to the contrary, and that no revisions are necessary. Nevertheless, in the spirit of cooperation with the self-regulatory process, Blue Buffalo agrees to (i) make checkmarks in True Blue Test appear more uniform, (ii) regularly monitor competitors' products to insure that the basis of the comparison is up to date (which the company would do anyway), and (iii) although it denies that any portion of its website fails to conform with the FTC's .Com Disclosures, make changes to the way explanatory language appears on its websites, including the mobile-optimized versions of its sites. Blue Buffalo will appeal the remainder of the NAD's decision to the NARB. **(#5696 AMU, closed 03/11/2014)**

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EXHIBIT B

Why Choose BLUE?

Because only BLUE is made with the unique combination of high-quality, natural ingredients plus exclusive LifeSource® Bits.

We love our dogs and cats like family so we want to feed them with the same care as family. That's why BLUE™ is made with only the finest natural ingredients plus the active nutrients and antioxidants of our exclusive, cold-formed LifeSource® Bits.

The Finest Natural Ingredients for Superior Nutrition

All of our great-tasting, natural and holistic BLUE dog food and BLUE cat food recipes feature:

- Deboned chicken, lamb or fish is the FIRST ingredient
- Wholesome whole grains
- Garden vegetables and antioxidant-rich fruit

Our Exclusive LifeSource Bits, Now Enhanced with Super 7 Antioxidants

All BLUE dog and cat dry foods contain LifeSource Bits, a precise blend of vitamins, minerals and antioxidants selected by holistic veterinarians and animal nutritionists. And now we've enhanced LifeSource Bits in **our BLUE Life Protection Formula for dogs and BLUE for Cats dry food** with our Super 7 package of powerful antioxidant-rich ingredients. "Cold-formed" to retain their potency, the ingredients in LifeSource Bits support:

- Immune system health
- Life stage requirements
- Healthy oxidative balance

LEARN MORE

BLUE uses only the finest natural ingredients and:

- NO chicken (or poultry) by-product meals
- NO artificial flavors, colors, or preservatives
- NO corn, wheat or soy, as they have been linked to allergic reactions in some pets

Source: Blue Buffalo website, 4/17/2014

What's In Our Food and Why

BLUE foods consist of the finest natural ingredients combined in perfect balance for superior nutrition. These delicious, high-quality ingredients are the foundation of all of our products along with intensively researched vitamins, minerals, and antioxidants – each combination specifically modified for dogs, cats, lifestages, weight conditions, taste preference, and personal feeding choice.

Like us, dogs and cats require a balanced diet that is a combination of six nutrient classes:

- Proteins
- Fats
- Carbohydrates
- Vitamins
- Minerals
- Water

These nutrients help dogs and cats meet their daily needs for energy, growth and overall well-being.

Of equal importance is the quality of the ingredients from which these nutrients are derived. For example, real chicken meat is a higher quality protein source than chicken or poultry by-product meals; chicken fat is considered a higher quality source of essential fatty acids than generic "animal fats." Subtle differences like these may determine whether a pet food brand's ingredients are as healthy as they claim to be.

High-Quality Protein Sources

Proteins are the basic building blocks for cells, tissues, organs, enzymes, hormones and antibodies, and are essential for growth, maintenance, repair and energy.

Proteins can be obtained from a variety of sources. Animal-based proteins such as chicken, lamb, turkey, beef, fish and egg have complete amino acid profiles, meaning they contain a wider variety of the amino acids your dog or cat can use.

BLUE recipes always feature high-quality proteins as the first ingredient–deboned chicken, lamb, or fish. That means there is more of that ingredient than any other in each recipe of BLUE.

Some brands cut corners by using protein from chicken or poultry by-product meals, or even worse, from corn or soy–not BLUE.

Fats

The most concentrated form of food energy, fats provide more than twice the energy of proteins or carbohydrates. They are also required for absorption and utilization of fat-soluble vitamins like vitamins A, D, and E. Fats supply fatty acids, which among other things, help to provide a healthy skin and coat and help reduce inflammation.

BLUE only uses the best sources of fats–wholesome vegetable oils like sunflower and flax seed, and quality fish oils from herring and salmon. Chicken fat is also a prominent ingredient in many of our products.

One of the biggest changes you might notice when you switch to BLUE is the beautiful sheen and soft texture of your dog or cat's fur. This is likely the result of the high quality, balanced combination of proteins, fats, and oils used in BLUE.

Source: Blue Buffalo website, 4/17/2014

What's Not In BLUE and Why

While the high-quality ingredients we include in BLUE are the foundation of our healthy, holistic diet, what we choose not to include is of equal importance.

There are many ingredients that are considered less than desirable by pet parents who want to feed their dog or cat with the same care as a family member. Surprisingly, when you look at dog food and cat food labels, you'll see some of these ingredients in many of the leading pet food brands – but not in BLUE.

Chicken or Poultry By-Product Meals

The definition of Poultry By-Product Meals, as stated in the AAFCO (Association of American Feed Control Officials) Publication 2009 reads, "Poultry [Chicken] By-Product Meal consists of the ground, rendered, clean parts of the carcass of slaughtered poultry, such as necks, feet, undeveloped eggs and intestines, exclusive of feathers, except in such amounts as might occur unavoidably in good processing practices. If the product bears a name descriptive of its kind [i.e. "Chicken By-Product Meal"] the name must correspond thereto."

At Blue Buffalo we use "Chicken Meal" or "Turkey Meal" made from the whole meat of the birds, not by-products. Poultry or chicken by-product meals cost a lot less than meals made from whole meat. At Blue Buffalo we think the cost is well worth it to know exactly what's in our food.

Corn, Wheat or Soy Proteins (Glutens)

All of these are less complete and lower quality sources of protein and are common allergens in pets. Grain proteins do not contain the complete amino acid profiles specific for dogs or cats and are not as easily digestible as meat-based proteins. Many pet food companies use the less expensive glutens to increase protein levels without the complete amino acid benefits of using more expensive meat, poultry or fish proteins.

Simply put, these ingredients are cheaper, lower in nutrition, and things we would never include in a BLUE recipe.

Artificial Colors, Flavors, or Preservatives

Preservatives like BHA, BHT, ethoxyquin, propylene glycol provide no nutritional value and have been associated with possible side effects. Some pet food brands resort to artificial colors and flavors in an attempt to make food look and taste better. We don't.

We hope this information helps you better understand what we do and why we do it at Blue Buffalo. We know we're not alone in our belief that these are the important factors that determine what makes up a truly healthy and nutritious pet food. The good thing is, BLUE dog and cat food was created with all of these things in mind–which means the decision about to what feed them just got a whole lot easier.

Source: Blue Buffalo website, 4/17/2014

EXHIBIT C

Follow Us • About Us • Work for BLUE • Site Search by-produ

BLUE

Nutrition Philosophy

Love them like family.
Feed them like family.®

Why BLUE? | Product Finder | For Dogs | For Cats | Health & Nutrition | Blue Stuff

Why Choose BLUE? | BLUE Story | Nutrition Philosophy | LifeSource Bits | FAQ | Store Locator | Enter Zip Code | Go

Blue Buffalo Nutrition and Ingredient Philosophy

"Love them like family. Feed them like family."

We love our pets, which is why everything we do always comes back to the idea that we think of them as family. Our goal is to create the healthiest foods possible–because a healthier dog or cat is a happier one, and a happier pet means a happier pet parent. That care and dedication goes into every bag we make.

What's In Our Food and Why

BLUE foods consist of the finest natural ingredients combined in perfect balance for superior nutrition. These delicious, high-quality ingredients are the foundation of all of our products along with intensively researched vitamins, minerals, and antioxidants – each combination specifically modified for dogs, cats, lifestages, weight conditions, taste preference, and personal feeding choice.

Like us, dogs and cats require a balanced diet that is a combination of six nutrient classes:

- Proteins
- Fats
- Carbohydrates
- Vitamins
- Minerals
- Water

These nutrients help dogs and cats meet their daily needs for energy, growth and overall well-being.

Of equal importance is the quality of the ingredients from which these nutrients are derived. For example, real chicken meat is a higher quality protein source than chicken or poultry by-

For the latest on BLUE
Enter your email address

TRUE BLUE TEST
Are the ingredients in your pet food as wholesome as you think?
Compare Dog Food
Compare Cat Food

Where to buy BLUE
Find a store near you.
Enter Zip Code | Go

Source: Blue Buffalo website, 4/17/2014

EXHIBIT D

THE TRUE BLUE TEST RESULTS

Love Them Like Family. Feed Them Like Family.

Save on BLUE dog food and treats! Scroll down to learn more.

How does your brand compare? Learn More

Roll over or touch to expand

	ALWAYS Has Real Meat as the First Ingredient (Learn More)	ALWAYS Includes Veggies and Fruit (Learn More)	NEVER Has Chicken (or Poultry) By-Product Meals (Learn More)	NEVER Has Artificial Colors, Flavors or Preservatives (Learn More)	NEVER Has Corn, Wheat or Soy (Learn More)
BLUE	✓	✓	✓	✓	✓
Beneful	—	—	—	—	—
Bil-Jac	—	—	—	✓	—
Eagle Pack	—	—	✓	✓	—
Eukanuba	—	—	—	✓	—
IAMS	—	✓	—	✓	—
Nutro MAX	—	—	✓	✓	—
Nutro NATURAL CHOICE	—	—	✓	✓	—
Pedigree	—	—	—	—	—
Purina BE HAPPY	—	—	—	—	—
Purina Dog Chow	—	—	—	—	—
Purina ONE	✓	—	—	✓	—
Purina PRO PLAN	—	—	—	✓	—
ROYAL CANIN	—	—	✓	✓	—
Hill's SCIENCE DIET	—	—	✓	✓	—

For detailed comparison information, click here.

Take The True BLUE Test for Cats. Click Here

Want to re-take the test? Click Here

Source: Blue Buffalo website, 4/17/2014

THE TRUE BLUE TEST RESULTS

Save on BLUE cat food, treats and litter!
Scroll down to learn more.

Love Them Like Family. Feed Them Like Family.

How does your brand compare? Learn More

Roll over or touch to expand

	ALWAYS Has Real Meat as the First Ingredient (Learn More)	ALWAYS Includes Veggies and Fruit (Learn More)	NEVER Has Chicken (or Poultry) By-Product Meals (Learn More)	NEVER Has Artificial Colors, Flavors or Preservatives (Learn More)	NEVER Has Corn, Wheat or Soy (Learn More)
BLUE	✓	✓	✓	✓	✓
Bil-Jac	—	—	—	—	—
Eagle Pack	—	—	✓	✓	—
Eukanuba	—	—	—	✓	—
IAMS	—	—	—	✓	—
[illegible]	—	—	—	—	—
Nutro MAX	—	—	✓	✓	—
Nutro NATURAL CHOICE	—	✓	✓	✓	—
Purina BE HAPPY	—	—	—	—	—
Cat Chow	—	—	—	✓	—
Fancy Feast	—	—	—	—	—
Friskies	—	—	—	—	—
Purina ONE					
Purina PRO PLAN					
ROYAL CANIN					
SCIENCE DIET					

For detailed comparison information, click here.

Take The True BLUE Test for Dogs. Click Here

Want to re-take the test? Click Here

Source: Blue Buffalo website, 4/17/2014

EXHIBIT E

Love them like family. Feed them like family.
Healthy
Holistic
THE BLUE BUFFALO CO.
BLUE
Life Protection Formula
with LifeSource Bits
NATURAL CHICKEN AND BROWN RICE RECIPE

EXHIBIT F

Available in 6, 15 and 30 lb. Bags

Like Share 228

Life Protection Formula Chicken & Brown Rice Recipe

for Puppies

BLUE Chicken and Brown Rice Recipe for puppies is formulated with ingredients chosen specifically to help them grow up strong and healthy.

Ingredient/Nutrient	Helps Support
High-Quality Protein	*Muscle Growth*
Calcium & Phosphorus	*Bone Development*
DHA	*Cognitive Development*
Vitamins & Chelated Minerals	*Immune Strength*
Omega 3 & 6 Fatty Acids	*Healthy Skin & Shiny Coat*
Fruits & Veggies	*Oxidative Balance*

The Wholesome Goodness of the Finest Natural Ingredients

High-Quality Protein
Puppies love our tasty chicken, and it provides them with essential amino acids they need every day.

Wholesome Whole Grains
Hearty whole grains like brown rice, barley and oats supply the complex carbohydrates that your puppy needs for energy.

Healthy Garden Veggies
Whole carrots, sweet potatoes and peas are three of the nutrient-rich vegetables that your puppy will get in every bite of BLUE.

Our Exclusive LifeSource® Bits, Now Enhanced with Super 7 Antioxidants

LifeSource Bits contain a precise blend of vitamins, minerals and antioxidants selected by holistic veterinarians and animal nutritionists. And now all BLUE Life Protection Formula dog foods feature LifeSource Bits that have been enhanced with our Super 7 package of powerful antioxidant-rich ingredients:

- Apples
- Blackberries
- Blueberries
- Cranberries
- Pomegranate
- Pumpkin
- Spinach

The Ingredients in LifeSource Bits help support:

- Immune system health
- Life stage requirements
- Healthy oxidative balance

And LifeSource Bits are cold-formed to help retain the potency of their ingredients. Other brands process their foods with heat up to 350°, which can degrade the potency of vitamins, antioxidants and nutrients by up to 75%.

Learn More

Ingredients

Deboned Chicken, Chicken Meal, Whole Ground Brown Rice, Oatmeal, Whole Ground Barley, Menhaden Fish Meal (source of DHA-Docosahexaenoic Acid), Chicken Fat (preserved with Mixed Tocopherols), Flaxseed (source of Omega 3 and 6 Fatty Acids), Natural Chicken Flavor, Peas, Tomato Pomace (source of Lycopene), Whole Potatoes, Fish Oil (source of Omega 3 Fatty Acids), Alfalfa Meal, Whole Carrots, Whole Sweet Potatoes, Blueberries, Cranberries, Apples, Blackberries, Pomegranate, Spinach, Pumpkin, Barley Grass, Dried Parsley, Garlic, Dried Kelp, Yucca Schidigera Extract, L-Carnitine, L-Lysine, Turmeric, Dried Chicory Root, Oil of Rosemary, Beta

Source: Blue Buffalo website, 4/17/2014

Available 15 and 30 lb. Bags

Like Share 241

Life Protection Formula Chicken & Brown Rice Recipe

for Large Breed Puppies

BLUE Chicken and Brown Rice Recipe for large breed puppies is formulated with ingredients chosen specifically to help address their special needs.

Ingredient/Nutrient	Helps Support
High-Quality Protein	Muscle Growth
Calcium & Phosphorus	Bone Development
DHA	Cognitive Development
Vitamins & Chelated Minerals	Immune Strength
Fruits & Veggies	Free Radical Fighters

The Wholesome Goodness of the Finest Natural Ingredients

High-Quality Protein
Puppies love our tasty chicken, and it provides them with essential amino acids they need every day.

Wholesome Whole Grains
Hearty whole grains like brown rice, barley and oats supply the complex carbohydrates that your puppy needs for energy.

Healthy Garden Veggies
Whole carrots, sweet potatoes and peas are three of the nutrient-rich vegetables that your puppy will get in every bite of BLUE.

Our Exclusive LifeSource® Bits, Now Enhanced with Super 7 Antioxidants

LifeSource Bits contain a precise blend of vitamins, minerals and antioxidants selected by holistic veterinarians and animal nutritionists. And now all BLUE Life Protection Formula dog foods feature LifeSource Bits that have been enhanced with our Super 7 package of powerful antioxidant-rich ingredients:

- Apples
- Blackberries
- Blueberries
- Cranberries
- Pomegranate
- Pumpkin
- Spinach

The Ingredients in LifeSource Bits help support:

- Immune system health
- Life stage requirements
- Healthy oxidative balance

And LifeSource Bits are cold-formed to help retain the potency of their ingredients. Other brands process their foods with heat up to 350°, which can degrade the potency of vitamins, antioxidants and nutrients by up to 75%.

Learn More

Ingredients

Deboned Chicken, Chicken Meal, Whole Ground Brown Rice, Whole Ground Barley, Oatmeal, Menhaden Fish Meal (source of DHA-Docosahexaenoic Acid), Tomato Pomace (source of Lycopene), Chicken Fat (preserved with Mixed Tocopherols), Natural Chicken Flavor, Peas, Alfalfa Meal, Whole Potatoes, Flaxseed (source of Omega 3 and 6 Fatty Acids), Fish Oil (source of Omega 3 Fatty Acids), Whole Carrots, Whole Sweet Potatoes, Blueberries, Cranberries, Apples, Blackberries, Pomegranate, Spinach, Pumpkin, Barley Grass, Dried Parsley, Garlic, Dried Kelp, Yucca Schidigera Extract, L-Carnitine, L-Lysine, Turmeric, Dried Chicory Root, Oil of

Source: Blue Buffalo website, 4/17/2014

Available in 6, 15 and 30 lb. Bags

Like Share 248

Life Protection Formula Chicken & Brown Rice Recipe

for Adult Dogs

Our natural BLUE Chicken & Brown Rice Recipe for adult dogs is holistically formulated to support the needs of dogs in the prime of their lives.

Ingredient/Nutrient	Helps Support
High-Quality Protein	Healthy Muscle Development
Wholesome Grains	Energy for an Active Life
Glucosamine	Joint Health
Omega 3 & 6 Fatty Acids	Shiny Coat, Healthy Skin
Calcium, Phosphorus and Essential Vitamins	Strong Bones and Teeth

The Wholesome Goodness of the Finest Natural Ingredients

High-Quality Protein
Dogs love our tasty chicken, and it provides them with essential amino acids they need every day.

Wholesome Whole Grains
Hearty whole grains like brown rice, barley and oats supply the complex carbohydrates that your dog needs for energy.

Healthy Garden Veggies
Whole carrots, sweet potatoes and peas are three of the nutrient-rich vegetables that your dog will get in every bite of BLUE.

Our Exclusive LifeSource® Bits, Now Enhanced with Super 7 Antioxidants

LifeSource Bits contain a precise blend of vitamins, minerals and antioxidants selected by holistic veterinarians and animal nutritionists. And now all BLUE Life Protection Formula dog foods feature LifeSource Bits that have been enhanced with our Super 7 package of powerful antioxidant-rich ingredients:

- Apples
- Blackberries
- Blueberries
- Cranberries
- Pomegranate
- Pumpkin
- Spinach

The Ingredients in LifeSource Bits help support:

- Immune system health
- Life stage requirements
- Healthy oxidative balance

And LifeSource Bits are cold-formed to help retain the potency of their ingredients. Other brands process their foods with heat up to 350°, which can degrade the potency of vitamins, antioxidants and nutrients by up to 75%.

Learn More

Ingredients

Deboned Chicken, Chicken Meal, Whole Ground Brown Rice, Whole Ground Barley, Oatmeal, Chicken Fat (preserved with Mixed Tocopherols), Peas, Tomato Pomace (source of Lycopene), Natural Chicken Flavor, Whole Potatoes, Flaxseed (source of Omega 3 and 6 Fatty Acids), Alfalfa Meal, Whole Carrots, Whole Sweet Potatoes, Blueberries, Cranberries, Apples, Blackberries, Pomegranate, Spinach, Pumpkin, Barley Grass, Dried Parsley, Garlic, Dried Kelp, Yucca Schidigera Extract, L-Carnitine, L-Lysine, Glucosamine Hydrochloride, Turmeric, Sunflower Oil (source of Omega 6 Fatty Acids), Fish Oil (source of Omega 3 Fatty Acids), Dried Chicory Root, Oil of

Source: Blue Buffalo website, 4/17/2014

Available in 2 and 5-lb. Bags

Like Share 0

BLUE Freedom Grain-Free Chicken Recipe

for Kittens

Some kittens just don't do well with grain-based foods. That's why we created BLUE Freedom dry food for indoor cats. BLUE Freedom contains no grains, so it has no gluten. Gluten can trigger allergic reactions in some cats.

A Grain-Free Food Made With The Finest Natural Ingredients.
BLUE Freedom is made with the finest natural ingredients—ingredients chosen with great care by our animal nutritionists, providing your cat with the right balance of high-quality protein and complex carbohydrates.

- Deboned chicken is always the first ingredient.
- Whole carrots, sweet potatoes and peas.
- Blueberries and cranberries.
- NO chicken (or poultry) by-product meals, NO corn, wheat or soy and nothing artificial.

BLUE Freedom for kittens is formulated to meet their special needs:

- DHA and ARA, important fatty acids found in mother's milk, along with Choline, support healthy development of cognitive learning and retinal function.
- High-quality protein from Deboned Chicken, plus Chicken Meal, Fish Meal and Egg helps develop strong muscles.
- Essential proteins and carbohydrates to help meet energy requirements for healthy growth and play.
- Essential vitamins, chelated minerals and important antioxidants help support the immune system.
- Taurine is an essential amino acid that kittens require to help with heart and eye development.
- An optimal balance of Omega 3 & 6 Fatty Acids helps develop a shiny coat and healthy skin.

The Enhanced Supplementation of Our Exclusive LifeSource® Bits

BLUE LifeSource Bits are a precise blend of antioxidants, vitamins and minerals selected by holistic veterinarians and animal nutritionists that support:

- Immune system health
- Life stage requirements
- Healthy oxidative balance

And LifeSource Bits are cold-formed to help retain the potency of their ingredients—other brands process their foods with heat up to 350°, which can degrade the potency of vitamins, antioxidants and nutrients by up to 75%.

Learn More

Ingredients

Deboned Chicken, Chicken Meal, Tapioca Starch, Peas, Menhaden Fish Meal (source of ARA-Arachidonic Acid and DHA-Docosahexaenoic Acid), Chicken Fat (preserved with Mixed Tocopherols), Turkey Meal, Pea Protein, Flaxseed (source of Omega 3 and 6 Fatty Acids), Dried Egg, Fish Oil (source of ARA-Arachidonic Acid and DHA-Docosahexaenoic Acid), Natural Flavor, Potatoes, Pea Fiber, Powdered Cellulose, Alfalfa Meal, Choline Chloride, Canola Oil (source of Omega 6 Fatty Acids), DL-Methionine, Dried Chicory Root, Potassium Chloride, Potato Starch, Salt, Calcium Carbonate, Taurine, Caramel, Sweet Potatoes, Carrots, Mixed Tocopherols (a natural preservative), Zinc Amino Acid Chelate, Zinc Sulfate, Parsley, Kelp, Blueberries, Cranberries, Barley Grass, Yucca Schidigera Extract, Turmeric, Ferrous Sulfate, Nicotinic Acid (Vitamin B3), Iron Amino Acid Chelate, Vitamin E Supplement, Oil of Rosemary, L-Carnitine, L-Lysine, L-Ascorbyl-2-Polyphosphate (a source of Vitamin C), Thiamine Mononitrate (Vitamin B1), Copper Sulfate, Biotin (Vitamin B7), Vitamin A Supplement, Copper Amino Acid Chelate, Pyridoxine Hydrochloride (Vitamin B6), Calcium Pantothenate (Vitamin B5), Sodium Selenite, Riboflavin (Vitamin B2), Manganese Sulfate, Manganese Amino Acid Chelate, Vitamin D3 Supplement, Vitamin B12 Supplement, Folic Acid (Vitamin B9), Calcium Iodate, Dried Yeast, Dried Enterococcus faecium fermentation product, Dried Lactobacillus acidophilus fermentation product, Dried Aspergillus niger fermentation extract, Dried Trichoderma longibrachiatum fermentation extract, Dried Bacillus subtilis fermentation product

Source: Blue Buffalo website, 4/17/2014

BLUE™ Healthy Living Chicken & Brown Rice Formula

for Adult Cats

Our natural BLUE Healthy Living Adult Cat food is holistically formulated to support the needs of cats in the prime of their lives.

Ingredient/Nutrient	Benefit
Vitamins & Chelated Minerals	Support Immune System Health
Taurine	Supports Heart & Eye Health
Omega 3 & 6 Fatty Acids	Support Skin & Coat Health
Finest Natural Ingredients	Support Digestive Health
High-Quality Protein	Supports Urinary Tract Health

Available in 3, 7 and 15 lb. bags

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The Wholesome Goodness of the Finest Natural Ingredients

High-Quality Protein is the First Ingredient
Cats love our tasty chicken, and it provides them with essential amino acids they need every day.

Wholesome Whole Grains
Hearty whole grains like brown rice, barley and oats supply the complex carbohydrates that your cat needs for energy.

Healthy Garden Veggies
Whole carrots, sweet potatoes and parsley are three of the nutrient-rich vegetables that your cat will get in every bite of BLUE.

Our Exclusive LifeSource® Bits, Now Enhanced with Super 7 Antioxidants

LifeSource Bits contain a precise blend of vitamins, minerals and antioxidants selected by holistic veterinarians and animal nutritionists. And now all BLUE Life Protection Formula cat foods feature LifeSource Bits that have been enhanced with our Super 7 package of powerful antioxidant-rich ingredients:

- Apples
- Blackberries
- Blueberries
- Cranberries
- Pomegranate
- Pumpkin
- Spinach

The Ingredients in LifeSource Bits help support:

- Immune system health
- Life stage requirements
- Healthy oxidative balance

And LifeSource Bits are cold-formed to help retain the potency of their ingredients. Other brands process their foods with heat up to 350°, which can degrade the potency of vitamins, antioxidants and nutrients by up to 75%.

Learn More

Ingredients

Deboned Chicken, Chicken Meal, Oatmeal, Whole Ground Brown Rice, Whole Ground Barley, Chicken Fat (preserved with Mixed Tocopherols), Salmon Meal, Menhaden Fish Meal (source of Omega 3 Fatty Acids), Dried Egg, Natural Chicken Flavor, Whole Potatoes, Peas, Whole Carrots, Whole Sweet Potatoes, Cranberries, Blueberries, Apples, Blackberries, Pomegranate, Spinach, Pumpkin, Flaxseed (source of Omega 3 and 6 Fatty Acids), Barley Grass, Dried Parsley, Alfalfa Meal, Dried Kelp, Taurine, Yucca Schidigera Extract, L-Carnitine, L-Lysine, Turmeric, Fish Oil (source of Omega 3 Fatty Acids), Oil of Rosemary, Beta Carotene, Vitamin A Supplement, Thiamine Mononitrate (Vitamin B1), Riboflavin (Vitamin B2), Niacin (Vitamin B3), d-Calcium

Source: Blue Buffalo website, 4/17/2014

EXHIBIT G

Case #4892 (07/31/08)
Blue Buffalo Company, LLC
BLUE pet food

Advertising Agency:	*Undisclosed*
Challenger:	*Hill's Pet Nutrition*
Product Type:	*Pet Products*
Issues:	*Health and Safety Claims*
Disposition:	*Modified/Discontinued/Substantiated*

Basis of Inquiry: Website and print advertising claims made by Blue Buffalo Company, LLC ("the advertiser") for its BLUE pet food were challenged by Hill's Pet Nutrition ("the challenger"), a manufacturer of competing pet food products.

The following claims are representative of those at issue:[1]

"NO Animal By-Products"

"And because the health of our dogs and cats is so important to us, we never use animal by-products"

"Most pet foods contain animal by-products. . . Before you say 'my pet's food has no animal by-products,' take a minute to read the ingredients. You'll probably be surprised to learn that you're not feeding them as well as you thought you were."

"Because the leading pet foods did not meet our standards, we developed a two-part product which combined a nutrition kibble that included human grade ingredients with our exclusive LifeSource Bits—active ingredients and antioxidants 'cold-formed' to preserve their potency."

"Now you can feed your dog like you feed your family"

"Feed your pet like you feed your family."

Challenger's Position:

I. "No Animal By-Products" Claims

The challenger took issue with the advertiser's express claims that none of its pet foods contain animal by-products. It also took issue with the implied claim that BLUE pet foods are healthier for pets than competitive foods that contain by-products.

The challenger pointed to the definitions promulgated by the Association of American Feed Control Officials ("AAFCO"). It argued that under these definitions, the lamb meal, fish meal, and animal liver that Blue Buffalo uses in many of its BLUE brand pet food products include—or, in the case of liver, are—animal by-products. The challenger noted that many of the

[1] In its initial letter to NAD, the challenger challenged numerous claims, many of which the advertiser subsequently agreed to discontinue on a voluntary basis. Such claims include: "human grade" claims, certain "feed your family" claims, certain "no animal by-products" claims, and several superiority claims. In the interest of best allocating NAD's resources, the scope of this decision is limited to those challenged claims which the advertiser has not voluntarily agreed to discontinue.

advertiser's lamb- and fish-based pet food products contain as primary ingredients lamb meal and/or some variety of fish meal. It argued that under AAFCO's definitions, "meat meal"—including lamb meal—and fish meal both may contain animal by-products.

The challenger noted AAFCO's definition of meat meal: "the rendered product from mammal tissues, exclusive of any added blood, hair, hoof, horn, hide trimming, manure, stomach and rumen contents except in such amounts as may occur unavoidably in good processing practices." According to the challenger, this definition allows meat meal to contain animal by-products, such as intestines and other internal organs. The challenger noted that the advertiser does not deny that there are lamb intestines in its products. It disagreed with the advertiser's reliance on AAFCO's definition of "animal by-product meal," because the ingredient that is found in Blue pet foods is "lamb meal," the definition of which allows it to contain intestines and other internal organs.

The challenger noted that AAFCO defines "fish meal" as "the clean, dried, ground tissue of undecomposed whole fish or fish cuttings, either or both, with or without the extraction of part of the oil." The challenger noted that this definition allows fish meal to contain any part of a whole fish, including the head, intestines, and other internal organs. The challenger noted that the industry considers such parts, including intestines, to be "by-products." The challenger reiterated that the advertiser does not dispute that these parts are present in its products. The challenger objected to the advertiser's reliance on AAFCO's definition of "fish by-products," as opposed to "fish meal," which is the ingredient listed on the label of the Blue products. The challenger argued that the fact that there is a definition for an ingredient called "fish by-products" does not mean that fish meal cannot contain by-products. Indeed, as the "fish meal" definition makes clear, fish meal can contain any part of the fish, including the by-products. With respect to the advertiser's contention that fish organs cannot be by-products unless they have been processed, the challenger responded that even if true, the organs in Blue's fish meal are processed. The "fish meal" definition provides that all the fish tissues in the ingredient must be ground.

The challenger argued that based on these definitions, suppliers of lamb meal and fish meal in the pet industry are permitted to—and do—include animal by-products in their meals. It noted that the advertiser does not deny that the lamb meal and fish meal it uses in its products contain lamb and fish intestines and other internal organs.

The challenger also noted that many of Blue Buffalo's canned pet foods contain portions of animal liver (e.g. chicken liver, beef liver, and lamb livers) as ingredients. It noted that AAFCO defines "poultry by-products" to include viscera, and defines "viscera" to include "[a]ll the organs in the great cavity of the body." It specifically defines "poultry viscera" to include "liver." AAFCO also defines "meat by-products" (i.e. by-products from animals) to include livers. Thus, the challenger argued that according to the AAFCO definitions, the advertiser's "no animal by-products" claims are literally false. The challenger objected to the advertiser's reliance on AAFCO definitions for "animal liver meal" and "animal by-product meal." It argued that these definitions do not mean that animal liver is not a by-product, or that only "animal by-product meal" may contain by-products. In fact, the challenger argued, both ingredients contain by-products. The difference is simply that "animal by-product meal" can include by-products

other than liver. Finally, the challenger disagreed with the advertiser's argument that livers are not by-products "when they are harvested as 'primary' organ meats." The challenger argued that the AAFCO definitions contain no such qualifications.

In response to the advertiser's argument that the AAFCO guidelines are not binding, the challenger argued that government regulators and the pet food industry give deference to the AAFCO guidelines, and that virtually all the states have adopted some portion of the AAFCO suggested guidelines within their regulatory schemes—including the feed ingredient definitions.

In response to the advertiser's argument that animal feed regulators have endorsed Blue Buffalo's interpretation of the AAFCO guidelines, the challenger argued that a regulator's approval of a pet food label does not mean that all claims on the label are automatically substantiated. The challenger noted several successful challenges to pet food advertising claims, before NAD as well as the district courts. Finally, the challenger noted a review conducted by the FDA's Center for Veterinary Medicine of similar "no by-product" claims in connection with a different pet food. The FDA found these claims to be misleading because, like Blue Buffalo products, the pet food in question contained lamb meal and fish meal.

The challenger further argued that even if Blue pet foods did not contain animal by-products, the advertiser still could not support its implied claim that Blue is healthier for pets than competing foods that contain animal by-products. If anything, the challenger maintained, Hill's ingredients that include by-products are healthier than Blue Buffalo's. The challenger contended that the advertiser's pet foods contain more bone—and therefore more calcium and phosphorus (both of which are dangerous in excessive levels)—by virtue of the advertiser's use of "chicken meal" as opposed to "chicken by-product." The challenger argued that this difference in calcium and phosphorus levels makes Hill's pet foods healthier.

II. "Because the leading pet foods did not meet our standards, we developed a two-part product which combined a nutrition kibble that included human grade ingredients with our exclusive LifeSource Bits—active ingredients and antioxidants 'cold-formed' to preserve their potency."

The challenger also took issue with the claim: "Because the leading pet foods did not meet our standards, we developed a two-part product which combined a nutrition kibble that included human grade ingredients with our exclusive LifeSource Bits—active ingredients and antioxidants 'cold-formed' to preserve their potency." The challenger characterized this as a comparative claim that communicates superiority over the leading brands.

The challenger objected to the data submitted by the advertiser in support of this claim. Rather than submitting data regarding all the leading brands, the challenger noted, the advertiser submitted only a single nutrient comparison between one of its dog foods and two of Hill's products. Moreover, the challenger noted that the advertiser did not conduct any independent testing of the nutrient levels in the two Hill's products, but instead consulted the nutrient values reported on Hill's product labels. The challenger asserted that in the case of Hill's Science Diet Nature's Best (one of the two tested Hill's products), the only nutrient values that are reported on

the labeling and website are guaranteed minimums and maximums—not the levels that are actually present in a typical sample of Hill's products. Second, regarding the nutrient contents taken from the labeling of the other tested Hill's product—Hill's Science Diet Advanced Protection—the packaging only reports guaranteed minimum values of antioxidant data. The challenger also noted that the other data relied upon by the advertiser concerning the nutrients of Hill's Science Diet Advanced Protection omits values for several key ingredients. These include carbohydrates, omega-3 and omega-6 fatty acids, and linoleic acid, all of which are important to an overall nutritional comparison. As for the advertiser's nutritional data concerning its own Blue product, the challenger argued that it could not determine the appropriateness of its test methodology because the data was submitted confidentially.

The challenger provided its own testing, conducted by an independent laboratory, of Hill's Science Diet Advanced Protection and Blue Buffalo's BLUE Chicken & Brown Rice and Lamb & Brown Rice formulas. This testing analyzed three off-the-shelf samples of each product. According to the challenger, the results show that Hill's Science Diet Advanced Protection is at parity with, or exceeds, the two Blue Buffalo products. The challenger noted that the Hill's product exceeds the Blue products in total omega-3 fatty acids, and is also superior by virtue of being lower in ash and sodium. Further, the challenger argued that the testing indicates that its own Science Diet product contains significantly higher levels of antioxidants than the Blue products. Finally, it noted that the Hill's product has much lower levels than the two Blue products of calcium and phosphorus, excessive amounts of which can lead to serious kidney problems in pets. In response to the advertiser's retort that the levels of these nutrients are still less than the maximums allowed by AAFCO, the challenger argued that these guidelines do not speak to the optimal levels of calcium and phosphorus, but to their upper limits.

III. "Feed your pet like you feed your own family" claims

Finally, the challenger took issue with the advertiser's claims that with Blue pet foods, a consumer can feed his or her pet "like you feed your family."[2] The challenger noted that the AAFCO guide provides that "Claims that a product contains or is made from ingredients that are . . food(s) that you (the purchaser) would feed your own family, or similar claims, are false and misleading unless the entire product, itself, meets the USDA and FDA standard for foods edible by humans." The challenger argued that AAFCO promulgated this rule due to a concern that claims such as Blue Buffalo's would mislead consumers into believing that pet foods contain the same ingredients as "people foods." Even in the rare case in which a pet food contained ingredients that would be edible by people, the challenger contended, the food is normally not prepared or handled according to the same standards and conditions that the USDA and FDA require for human food.

Regardless of AAFCO, the challenger argued, advertisers must substantiate all reasonable interpretations of their claims. It contended that the challenged claims convey the message that Blue pet foods are made from ingredients that people would eat. To the contrary, it noted, the

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[2] The challenger also initially challenged the advertiser's "human grade" claims, although the advertiser subsequently decided to discontinue its "human grade "claims as well as certain "feed your family" claims.

products contain ingredients such as rendered animal meal powders including chicken meal, fish meal, and lamb meal that contain animal intestines and a significant amount of ground bone.

Advertiser's Position:

The advertiser first notified NAD that for marketing reasons, it has decided to permanently discontinue some of those claims that were challenged by Hill's.[3] As background, the advertiser explained that it markets a line of Blue pet foods for dogs and cats. Its foods are made of high quality ingredients, such as deboned chicken, lamb, fish, and whole grains. The advertiser also noted that its foods contain "LifeSource Bits," which are active nutrients and antioxidants that have been "cold-formed" to preserve their potency and increase the bio-availability of vitamins to pets. It further explained that its pet foods do not contain corn, wheat, or soy, which are known to trigger pet allergies.

I. "Feed your pet like you feed your family" claims

The advertiser argued that its "feed your pet like you feed your family" claims are supported, and are not "human grade" claims.[4] The advertiser maintained that these claims convey the message that the ingredients in Blue pet foods are chosen with the same degree of care that consumers use in selecting foods for their own families.

The advertiser contended that these "feed your family" claims must be viewed in context. It noted that the print advertising that contains these claims lists the nutritious ingredients contained in the pet foods, such as deboned chicken, fish, lamb, as well as whole grains, vegetables, and LifeSource Bits. It further noted that this claim is part of a larger paragraph that informs consumers that Blue pet foods contain all-natural ingredients, such as whole grains, and "LifeSource Bits." With respect to this claim as it appears in advertising for Blue Organics, the advertiser noted that it appears in an advertisement featuring a girl hugging her dog, accompanied by the claim, "Feed your pet like you feed your family. Introducing Blue Organics." The advertiser maintained that the photograph and copy together make clear that by

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[3] The voluntarily discontinued claims include: (i) "And because the health of our dogs and cats is so important to us, we never use animal by-products"; (ii) "[m]ost pet foods contain animal by-products. . . Before you say 'my pet's food has no animal by-products,' take a minute to read the ingredients. You'll probably be surprised to learn than you're not feeding them as well as you thought you were"; (iii) "the nutrition in our formulas exceeds that of the leading pet food brands"; (iv) By feeding your dog or cat BLUE, you can feel good knowing that LifeSource Bits are providing them with a level of protection they can't get with any other pet food"; (v) "it's this combination of higher level nutrition and breakthrough protection that sets BLUE apart from any other food you can feed your dog or cat"; (vi) "BLUE Life Protection Formula and BLUE Spa Select—it's higher level nutrition by providing the extra protection that dogs and cats need at a time when cancer and environmental toxins seem to be increasing at an alarming rate"; (vii) "BLUE's exclusive LifeSource Bits compliment our unsurpassed nutrition by providing the extra protection that dogs and cats need at a time when cancer and environmental toxins seem to be increasing at an alarming rate"; (viii) BLUE's LifeSource Bits will. . . help protect them from the negative impact of environmental toxins [which] is particularly important these days because many veterinarians are now beginning to link the growing incidence of cancer with the increase in environmental toxins"; (ix) "All Natural, Healthy Pet Food with Human Grade Ingredients"; and (x) "ALL of BLUE's ingredients are human grade."

[4] The advertiser argued that Hill's challenge to this claim is ironic, considering that Hill's itself, in advertising for its Nature's Best pet food, claims that "64% of natural consumers feed their pet as they would feed themselves."

feeding one's pet Blue Organics, one can feed the pet with the same loving care is she would her own family.

Additionally, the advertiser noted that the AAFCO guidelines on which Hill's relies are not binding. In any case, it argued that the guidelines are inapplicable because they only apply to labeling. Even assuming the guidelines were relevant, however, the advertiser argued that these claims are permissible under the guidelines. The advertiser noted that the cited definition pertains to claims that a product "is made from ingredients that are. . . foods you (the purchaser) would feed your own family." However, it argued that the challenged advertising makes no claims, expressly or impliedly, that the ingredients in its pet foods are the same as those which consumers would feed their own families.

Finally, the advertiser noted that its advertising specifically refers to ingredients that it is clear that no humans would eat—Life Source Bits. The advertiser further noted that Hill's makes the same claim that consumers can "feed their pet as they would feed themselves." It disagreed with the challenger's argument that the Hill's claim "merely reported the results of a survey."

II. "Because the leading pet foods did not meet our standards, we developed a two-part product that combined a nutrition kibble with our exclusive LifeSource Bits—active nutrients and antioxidants 'cold formed' to preserve their potency."

The advertiser next addressed Hill's challenge of its claim: "Because the leading pet foods did not meet our standards, we developed a two-part product that combined a nutrition kibble with our exclusive LifeSource Bits—active nutrients and antioxidants 'cold formed' to preserve their potency." It argued that no reasonable consumer would interpret this statement as a superiority claim. First, it conveys only one message about the leading brands—that Blue Buffalo was dissatisfied with their product formulas. The advertiser characterized this statement as a "claim of differentiation," meaning that Blue Buffalo was dissatisfied with the leading pet food manufacturers' formulas, and, as a result, created its own unique food-making process.
The advertiser explained that heat processing can be detrimental to the vitamin and nutrient contents of foods. During processing, pet foods undergo a process called extrusion, in which the ingredients are typically subjected to temperatures ranging from 240 to 260 degrees Fahrenheit. To combat the detrimental effects of extrusion, the advertiser developed a unique two-step approach to achieve greater levels and vitamins and antioxidants. The "LifeSource Bits" in the pet foods are "cold-formed" cooked, avoiding high temperatures and thereby enhancing the bioavailability of the LifeSource Bits.

The advertiser further argued that its claim regarding the advertiser's "standards" is simply the advertiser's subjective opinion. It contended that this type of vague and subjective expression of opinion is puffery, which no reasonable consumer would take seriously. The advertiser noted the ABC Advertising Guidelines, which state that "Goal or promise claims expressing commitments or objectives established by the advertiser for its product, service, or company generally cannot be verified. . . Such claims are generally acceptable [without substantiation] provided that it is clear that they are simply the advertiser's self-made goals or aspirations. The advertiser noted its use of the words "our standards," which it classified as denoting its "self-made goals or

aspirations." The advertiser disagreed with the challenger's reliance on NAD's decision in Nestle Purina Petcare Company (Fancy Feast Gourmet Gold).

The advertiser argued that having removed all of the superiority claims from the challenged advertising, it need not provide support for a superiority message. In any case, the advertiser submitted a nutrient comparison between Blue Buffalo Chicken Adult Dog Dry food and two Hill's products. The advertiser argued that this comparison shows that the Blue Buffalo product (i) far exceeds the minimum requirements for nutrients as established in the AAFCO guidelines; and (ii) exceeds the nutrient levels in the comparable Hill's product for certain key nutrients, protein, fat, and Vitamin C.[5] The advertiser disputed the challenger's argument that the calcium and phosphorus levels in Blue Buffalo pet foods are unacceptably high because they are higher than 1.0% and 0.9% respectively. The advertiser noted that the AAFCO guidelines suggest a maximum level of 2.5% and 1.6% for calcium and phosphorus. It explained that the reason why it provided the nutrient comparison data was not to support a superiority message, but simply to show that its pet foods are healthy and contain key beneficial ingredients and nutrients.[6]

With respect to the comparative testing submitted by Hill's, the advertiser noted that Hill's did not test the same products that were reviewed in its own comparison. Accordingly, the advertiser disagreed with the challenger's conclusion that Hill's testing invalidates its own data. In any case, the advertiser noted that according to the challenger's own testing, the Blue products are shown to be healthy and nutritious—in many respects, more so than Hill's products. The advertiser argued that Blue Buffalo outperformed Hill's in each of these categories, as well as in metabolizable energy: (i) protein; (ii) fat; (iii) carbohydrates; (iv) linoleic acid; and (v) omega-6. The advertiser contended that these results are consistent with the nutrient comparison provided by Blue Buffalo.

III. "No animal by-products" claims

The advertiser argued that its pet foods contain no animal by-products as such term is interpreted and applied by state feed control officers. The advertiser noted that state regulators in 44 states—all the states to which Blue Buffalo has submitted applications for registration—have approved

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[5] The advertiser submitted this data to NAD on a confidential basis.

[6] More generally, the advertiser argued that its pet foods are extremely nutritious and beneficial for pets. The advertiser explained that its products were formulated by veterinarians and PhD pet food nutritionists in a manner that achieves high levels of nutrients for pets. For example, it noted that its foods (i) contain scientifically-selected ingredients such as fresh lamb meat, chicken, and fish, which are always in the first position in the products and have a higher quality of protein than rendered meals; (ii) contain animal protein, which is extremely digestible and contains a complete source of amino acids; (iii) use only whole grains that contain a balance of carbohydrates, protein, and fat; (iv) include endosperm, which contains energy-producing carbohydrates; (v) include a choice selection of grains that have a lower incidence of allergenicity than corn, wheat, and soy; (vi) include fresh fruits and vegetables; (vii) contain chelated or proteinated minerals that are more easily absorbed into the body through the gut wall due to their protein carriers, thus increasing the bioavailability of more minerals to pets; (viii) contain natural fish oils that supply omega-3 fatty acids; (ix) contain natural taurine, which promotes healthy eyes and heart, as well as natural glucosamine and chondroitin sulfate; and (x) include other natural and holistic ingredients such as kelp, parsely, alfalfa, yucca, and flaxseed.

BLUE pet foods, including many foods that contain livers, lamb meal, and fish meal, with packaging bearing the claim "no by-products" or "no animal by-products."

With respect to the challenger's reliance on the AAFCO guidelines, the advertiser noted that AAFCO lacks regulatory authority. It noted that compliance with these guidelines is voluntary, not mandatory. Further, the advertiser argued that although virtually all of the states have adopted some portion of the AAFCO suggested guidelines, the interpretation, application, and enforcement of these guidelines is left to state agencies. The advertiser contended that states are regularly called upon to review pet food labeling and packaging for accuracy and compliance with AAFCO definitions, and that numerous state officials have approved the challenged Blue Buffalo packaging. The advertiser noted that the approved packaging includes the challenged "no animal by-product" claims. It reported that not one state has refused to accept any of these products for registration.

In addition, the advertiser argued that BLUE pet food ingredients do not constitute by-products under AAFCO definitions. The advertiser noted that AAFCO defines "by-products" as "secondary products produced in addition to the principal product." With respect to the issue of fish by-products in particular, the advertiser pointed to AAFCO's definition of "fish by-products" which refers to "non-rendered, clean undecomposed portions of fish (such as, but not limited to, heads, fins, tails, ends, skin, bone and viscera) which result from the fish processing industry." According to this definition, the advertiser argued, fish by-products are created when fish has undergone processing. The advertiser noted that most of the fish meal used in its products are made using the entire, unprocessed fish—thereby not qualifying as fish by-products as defined by AAFCO. Conversely, the advertiser noted, AAFCO defines "fish meal" as "the clean, dried, ground tissue of undecomposed whole fish or fish cuttings, either or both, with our without the extraction of part of the oil."

Similarly, the advertiser argued that the lamb meal used in its pet foods is not a by-product. The advertiser noted that AAFCO has two separate definitions for "meat meal" and "animal by-product meal." The latter definition is said to cover "products that cannot meet the criteria set forth elsewhere." The advertiser argued that the lamb meal in its products meets the definition of "meat meal" and therefore cannot also be an "animal by-product." The advertiser contended that state feed control officers view these definitions as it does. The advertiser also noted the two separate definitions for (i) "Meat by-products": "The non-rendered, clean parts, other than meat, derived from slaughtered mammals. It includes, but is not limited to, lungs, spleen, kidneys, brain, livers, blood, bone, partially defatted low temperature fatty tissues and stomachs and intestines freed from their contents. It does not include hair, horns, teeth and hoofs"; and (ii) "Meat meal": "The rendered product from mammal tissues, exclusive of any added blood, hair, hoof, horn, hide trimmings, manure, stomach and rumen contents except in such amounts as may occur unavoidably in good processing practices. It shall not contain added extraneous materials not provided for by this definition." The advertiser argued that in order to create lamb (or meat) meal, the product must be rendered (unlike meat by-products.) It noted that another important

difference between meat meal and meat by-products is the inclusion of blood—the former cannot contain blood, whereas the latter does.[7]

Finally, it argued that the liver in its products are not by-products. The advertiser argued that AAFCO guidelines provide that livers are treated (and defined) differently when they are secondary products produced during the processing of the principal product. It noted that the guidelines contain a separate definition for "animal liver," which means that animal liver is not always considered a by-product. The definition provides that "animal liver meal" is "obtained by drying and grinding liver from slaughtered animals." The advertiser contended that animal liver meal is therefore a different ingredient than animal by-product meal and poultry by-product meal. The advertiser argued that state regulators also take the position that livers, when they are harvested by themselves as "primary" organ meats, and listed as such in the ingredients, are not "by-products" under the definitions. However, it contended, when livers are collected as a component, among other internal organs and tissues left over in the slaughtering process, they may be by-products.

Additionally, the advertiser argued that its "no by-products" claims is consistent with industry usage. The advertiser noted many examples of pet food brands that feature "no by-products" claims, but include liver, lamb meal, and/or fish meal. Finally, the advertiser disagreed with the challenger's argument that Blue's "no by-products" claims are misleading. The advertiser noted that its advertising does not list unsavory animal parts, nor does it make any mention of animal feet, intestines, viscera, or necks.

Decision:

NAD noted that Blue Buffalo pet foods are nutritious products made using innovative processing methods. NAD acknowledged the great care with which the advertiser chooses its ingredients, and appreciated the advertiser's inventive "cold-forming" technique. The scope of the instant proceeding, however, extends beyond the general issue of pet food quality. NAD was called upon to review three types of claims made for Blue pet foods: (i) claims that the foods contain "no animal by-products," (ii) claims that with Blue pet foods, consumers can feed their pets "like you feed your family," and (iii) the claim that "[b]ecause the leading pet foods did not meet our standards, we developed a two-part product that combined a nutrition kibble with our exclusive LifeSource Bits—active nutrients and antioxidants 'cold formed' to preserve their potency." NAD considered these claims in turn.

I. "No animal by-products" claims

NAD first considered the claim that Blue Buffalo pet foods contain "no animal by-products." Prior to reviewing the evidence offered in support of this claim, NAD considered the reasonable takeaway of the "no animal by-products" claim. In the absence of consumer perception evidence,

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[7] With respect to the injunction referenced by the challenger, the advertiser argued that this is a useless example because this injunction was a "consent" injunctive order. As such, it was not decided by a court based on the parties' evidence, but was voluntarily agreed upon by the defendant.

NAD routinely steps into consumers' shoes to assess the reasonable takeaway of advertising claims. Here, NAD determined that consumers could reasonably interpret a "no animal by-products" claim to mean that the advertised product does not contain various non-meat animal parts that are generally considered unappetizing, such as intestines, heads, kidneys, spleens, viscera, skin, and bones.

Such an interpretation is supported by other pet food manufacturers' definitions of what constitutes "by-products," as seen in the record. For example, the website for Pet Promise pet foods, in a "Frequently Asked Questions" section, defines "animal by-products" as containing "the identified meat, plus a wide variety of 'secondary' items from meat animals, including some of the internal organs. This term can be used to everything from the trachea to the viscera." Similarly, the Wellness pet food website states that animal by-products include "intestines, lungs, spleen, livers, kidneys, brains, blood, bone, stomachs, beaks, feathers, and feet." Likewise, a former page from the Blue Buffalo website, in a FAQ section, defines "poultry by-product" as "chicken meat that has been derived from ground necks, feet and intestines."

NAD next looked to the composition of Blue Buffalo pet foods in order to assess whether the products contain animal parts that could be reasonably understood by consumers to be "by-products." The Blue Buffalo labels report that the products include as ingredients "lamb meal," "fish meal," and liver. With respect to the "fish meal" in its products, the advertiser explained that the products contain whitefish meal and Menhaden fish meal, both of which are prepared from the whole fish. However, NAD noted the absence of evidence in the record documenting or explaining the composition of lamb meal as it is found in Blue Buffalo products. Rather than providing direct evidence as to the composition of its lamb meal, the advertiser pointed to AAFCO's definition of "meat meal," and, in contrast, "meat by-products."

Although the AAFCO definitions set forth certain parameters for what constitutes "meat meal," NAD noted that AAFCO definitions, by their nature, are not substitutes for direct evidence that speaks to the composition of Blue Buffalo products in particular. In support of a "no animal by-products" claim, NAD would expect information as to whether the lamb meal in its products contains, for example, intestines, heads, feet, intestines, viscera, etc—all of which consumers could reasonably construe to be "by-products." NAD was therefore troubled by the absence of documentation detailing the composition of Blue Buffalo's lamb meal.

The absence of such information was of particular concern in light of the challenger's repeated insistence that the lamb meal in Blue Buffalo products contains internal organs. Although Blue Buffalo denied, in a footnote in its second submission to NAD, that its products contain intestines, the advertiser did not dispute the challenger's more general assertion that its products contain other internal organs from lambs. Moreover, the advertiser's sole contention that its products contain no intestines was seemingly linked to the advertiser's interpretation of the applicable AAFCO definitions.[8]

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[8] *See* Footnote 14 of the advertiser's May 27, 2008 letter to NAD, which reads "We note that Hill's allegations that Blue Buffalo has conceded that its lamb meal contains intestines is similarly untrue. It is apparent from the applicable AAFCO definitions (along with state and industry interpretations) that the lamb meal in BLUE pet foods does not constitute by-products."

Absent any evidence pertaining to the make-up of Blue Buffalo's lamb meal itself, NAD was left to rely on the term "meat meal" as defined by AAFCO.[9] According to the AAFCO guidelines, meat meal (of which lamb meal is one type) is "[t]he rendered product from mammal tissues, exclusive of any added blood, hair, hoof, horn, hide trimmings, manure, stomach and rumen contents except in such amounts as may occur unavoidably in good processing practices. It shall not contain added extraneous materials not provided for by this definition."

NAD noted that "mammal tissues" is a very broad category, which may include parts such as kidneys, intestines, spleens, and brains—all of which could be reasonably understood by consumers to be by-products. NAD was not persuaded by the advertiser's argument that if an ingredient meets AAFCO's definition of "meat meal," it by definition cannot contain "meat by-products." NAD acknowledged that AAFCO provides separate definitions for "meat meal" and "meat by-products." However, NAD noted that the broad definition of "meat meal" ("[t]he rendered product from mammal tissues," excluding certain items) encompasses meat by-products. While true—as noted by the advertiser—that "meat meal" as defined by AAFCO cannot contain blood, whereas "meat by-products" may contain blood, this fact does not undermine the fact that meat meal may contain many other kinds of by-products, such as kidneys, intestines, etc. Similarly, the fact that "meat by-products" on their own are defined as non-rendered does not mean that once these very by-products are included in "meat meal," they lose their status as by-products. NAD determined that such an understanding conflicts with reasonable consumers' expectations.

NAD came to the same conclusion regarding "fish meal." The "fish meal" in Blue Buffalo products includes whitefish meal and Menhaden fish meal, both of which are prepared from the whole fish. NAD noted that "whole fish" necessarily includes intestines, eyeballs, skin, bones, heads, tails, and other fish parts that could reasonably be considered by-products. The fact that AAFCO defines "fish by-products" as "non-rendered, clean undecomposed portions of fish (such as, but not limited to, heads, fins, tails, ends, skin, bone and viscera) which result from the fish processing industry," does not mean that these very parts, if added to a pet food individually, rather as packaged in a whole fish, cease to be by-products. In either case, the ingredients will be processed and the pet food will contain brains, eyeballs, spleens, and other parts that could be reasonably construed by consumers as by-products.

NAD also determined that the liver in Blue Buffalo products qualifies under AAFCO guidelines as a by-product. AAFCO defines "meat by-products" as including "livers." NAD was not persuaded that the status of liver as a by-product depends on the process by which the liver is obtained. NAD determined that to the extent ordinary consumers are concerned about the by-products in their pet foods, the concern is likely to be based on the presence or absence of

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[9] While NAD agreed with the advertiser that the AAFCO Guidelines are not binding and that they are technically labeling guidelines, NAD has historically found these guidelines to be helpful in reviewing pet food advertising claims. NAD therefore looked to these guidelines not as binding regulations, but as a relevant and persuasive third-party source.

particular animal parts—not the harvesting method used, or the theoretical status of the organ as "primary" versus "secondary."[10]

Finally, NAD was not persuaded by the advertiser's argument that because its pet food labels have not been rejected by state regulators, this proves that regulators support the advertiser's interpretation of the AAFCO guidelines. NAD noted that mere lack of enforcement by such state regulators does not demonstrate that advertising claims are supported. As noted by the challenger, NAD has often found state regulator-approved pet food labeling to contain unsupported messages.[11]

NAD therefore recommended that the advertiser discontinue its "no animal by-products" claims when made in reference to pet foods containing fish meal, lamb meal, and/or liver.

II. "Because the leading pet foods did not meet our standards, we developed a two-part product that combined a nutrition kibble with our exclusive LifeSource Bits—active nutrients and antioxidants 'cold formed' to preserve their potency."

NAD next looked to the advertiser's claim: "Because the leading pet foods did not meet our standards, we developed a two-part product that combined a nutrition kibble with our exclusive LifeSource Bits—active nutrients and antioxidants 'cold formed' to preserve their potency." NAD first considered the reasonable takeaway of this claim. In the absence of consumer perception evidence, NAD routinely steps into consumers' shoes to determine the reasonable takeaway of advertising claims. Here, NAD determined that consumers could reasonably understand this claim to mean that Blue Buffalo developed a product with a superior nutritional value (relating to nutrients and antioxidants) as compared to the leading pet food brands, which did not meet the advertiser's standards. NAD was not persuaded by the advertiser's argument that this claim is merely a "claim of differentiation" indicating that Blue Buffalo was dissatisfied with competitor's standards and therefore created its own process for making pet food. Although the claim does not explicitly state that Blue pet foods are more nutritious than competing brands, it is established NAD precedent that advertisers must not only substantiate their express claims but also those that are reasonably implied. Here, NAD found, the implication of superiority is clear. NAD noted that there must be a reason why the competition "did not meet [the

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[10] While NAD appreciated that AAFCO defines by-products, as a general matter, as "secondary products produced in addition to the primary product," NAD disagreed with the advertiser's method of speculation as to what constitutes "secondary" versus "primary" products. For example, if a cow were slaughtered with the "primary" intent of obtaining beef for human consumption, any leftover cow parts (including leftover meat) that are used to make "meat meal" for pet food could presumably be considered "secondary." If the same cow were slaughtered for the sole purpose of creating meat meal for pet food, the same meat could be considered "primary," and therefore not a by-product. NAD determined that AAFCO's definition of "by-product" should not be subject to such speculation about the circumstances under which particular animal parts are obtained. NAD therefore concluded that AAFCO's distinction of "secondary" versus "primary" products is best understood as relating to the common layperson's understanding of parts that could be considered "secondary" or throw-away animal parts, such as kidneys, spleens, brains, eyeballs, etc.

[11] See e.g. Hill's Pet Nutrition, Inc. (Hill's Science Diet puppy and kitten products), Case # 4355, NAD/CARU Case Reports (July, 2005)

advertiser's] standards," and that consumers would be very likely to understand this reason to be the leading brands' nutritional inferiority.[12]

Having determined that the challenged "meet our standards" claim communicates a superior nutrition message, NAD noted that the advertiser was required to show that Blue Buffalo pet foods are more nutritious than the leading brands. NAD first looked to the nutritional data, provided on a confidential basis by the advertiser, which compares: (i) Blue Buffalo Chicken and Brown Rice; (iii) Hill's Science Diet Advanced Protection; and (iii) Hill's Nature's Best Chicken and Brown Rice.

First and foremost, NAD determined that in order to support a superiority claim about "the leading pet foods," an advertiser would need to provide nutritional data on not just two particular pet foods made by one competitor—but on a diverse range of competing products produced by different pet food makers. Here, the advertiser provided data only regarding two Hill's products. NAD therefore concluded that the advertiser's evidence was not sufficient to support a broad superiority claim as to "the leading pet foods."

NAD was also troubled that the advertiser did not conduct independent testing of the nutrient levels in the two Hill's products, but instead relied on the nutrient values reported on the product labels. As noted by the challenger, the nutrient values that are reported on the label of Hill's Science Diet Nature's Best are guaranteed minimums and maximums—not the levels that are actually present in an average sample of Hill's products. Likewise, the nutrient contents reported on the labeling of Hill's Science Diet Advanced Protection only reflect the guaranteed minimum values of antioxidant data. The other data relied upon by Hill's concerning the nutrients of Hill's Science Diet Advanced Protection omits values for carbohydrates, omega-3 and omega-6 fatty acids, and linoleic acid, all of which are important to an overall nutritional comparison.

Adding to NAD's concern was the fact that the calcium and phosphorus levels (excessive amounts of which can lead to health problems in pets) in Blue Buffalo pet foods are shown to be higher than in the competing Hill's product. While NAD appreciated the advertiser's argument that the calcium and phosphorus content in its foods are still lower than the maximums provided by AAFCO, NAD noted that AAFCO's guidelines provide *maximum* levels rather than ideal levels. [13]

For these reasons, NAD determined that the advertiser did not have a reasonable basis for the superiority message arising from the "meet our standards" claim. NAD therefore recommended that the advertiser either discontinue this claim, or modify it by omitting reference, or comparison, to the leading pet food manufacturers not meeting its standards.

III. "Feed your pet like you feed your family" claims

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[12] NAD was not persuaded by the advertiser's argument that this statement was mere puffery. NAD determined that reasonable consumers would not dismiss this claim as mere hyperbole or exaggeration. NAD noted that this claim lacked any of the hallmark indicators of puffery (vague wording, obvious exaggeration, etc.)

[13] Having determined that the superiority message lacked a reasonable basis, NAD did not have the occasion to assess the challenger's evidence regarding the nutritional comparison of its own products and Blue Buffalo's.

Finally, NAD reviewed the advertiser's "feed your pet like you feed your family" claims. First, NAD noted its appreciation of the advertiser's voluntary commitment to discontinue certain "feed your family" claims, such as (i) "BLUE uses only the finest ingredients—the kind you feed your own family," and (ii) "BLUE Spa Select has no corn gluten or artificial preservatives, just wholesome natural ingredients like you'd choose for your family." Given the evidence in the record, NAD determined that the decision to discontinue these claims was appropriate and necessary.

NAD next addressed the takeaway of the remaining "like you feed your family" claims. As always, NAD reviewed the claims in the context in which they appear. NAD noted, for example, an advertisement for "BLUE Natural Food and Treats for Dogs" which reads: "Now you can feed your dog like you feed your family with the BLUE line of natural, healthy and holistic foods for dogs. All BLUE recipes contain real meat as the first ingredient, along with wholesome whole grains, garden veggies and healthy fruit—the kinds of things you put on your own dinner table." In the context of an advertisement touting Blue's use of particular healthy ingredients ("real meat," "wholesome whole grains," "garden veggies," etc.), such as those "you put on your own dinner table," NAD determined that a claim that "you can feed your dog like you feed your family" conveys the message that the dog food is made from human-edible ingredients and is fit for human consumption. NAD noted there is no support for such a message in the record.

NAD further noted the AAFCO guidelines, which provide that "Claims that a product contains or is made from ingredients that are. . . food(s) that you (the purchaser) would feed your own family, or similar claims, are false and misleading unless the entire product, itself, meets the USDA and FDA standard for foods edible by humans." NAD determined that the "feed your dog like you feed your family" claim—in the context of an advertisement that touts the product's "real meat," "wholesome whole grains," and "garden veggies," such as those "you put on your own dinner table"—falls into the category of false and misleading claims under AAFCO's guidelines.

NAD therefore recommended that the advertiser discontinue the "like you feed your family" claim as it appears appear in the context of advertisements touting the wholesome fruits, vegetables, and other ingredients found in BLUE products.

NAD came to a different conclusion, however, with respect to the challenged print advertisement for "BLUE Organics." This advertisement features a photograph of a young girl hugging a dog along with the copy, "Feed your pet like you feed your family. Introducing BLUE Organics." In the context of this advertisement—which is not about the wholesome ingredients found in BLUE pet foods, but merely introducing an organic product line—NAD found that the message conveyed is that which the advertiser intended: that by choosing BLUE brand pet foods, consumers can feed their pets with the same care (using organic ingredients) that they feed their

own families. NAD found this message to be supported by the record, which shows that BLUE brand pet food ingredients are indeed healthy and carefully chosen.[14]

Conclusion:

NAD recommended that the advertiser discontinue its "no animal by-products" claims when made in reference to pet foods containing fish meal, lamb meal, and/or liver. NAD determined that the advertiser did not have a reasonable basis for the superior nutrition message arising from the claim: "Because the leading pet foods did not meet our standards, we developed a two-part product that combined a nutrition kibble with our exclusive LifeSource Bits—active nutrients and antioxidants 'cold formed' to preserve their potency." NAD therefore recommended that the advertiser either discontinue this claim, or modify it by omitting reference to the leading pet food manufacturers not meeting its standards. NAD recommended that the advertiser discontinue the "feed your [pet] like you feed your family" claim that appears in the context of advertisements that tout the wholesome fruits, vegetables, and other ingredients that "you put on your own dinner table." NAD came to a different conclusion, however, with respect to the "[f]eed your pet like you feed your family" claim as it appears in the context of advertising for its Blue Organics line, which makes no reference to the product's ingredients. NAD found that the message conveyed by such advertisements is that which the advertiser intended: that by choosing BLUE brand pet foods, consumers can feed their pets with the same care (by selecting organic ingredients) with which they feed their own families. NAD found this message to be supported by the record, which shows that BLUE brand pet food ingredients are indeed healthy and carefully chosen.

Advertiser's Statement:
Blue Buffalo is pleased with NAD's determination that BLUE pet foods are nutritious products made using innovative processing methods, that Blue Buffalo takes great care in choosing ingredients for its pet foods, and that Blue Buffalo's "cold-forming" technique is inventive. Additionally, Blue Buffalo is pleased that NAD determined that the BLUE Organics print advertising claim "feed your pet like you feed your family" claim was substantiated because BLUE pet food ingredients are indeed healthy and carefully chosen.

However, Blue Buffalo respectfully disagrees with the remainder of NAD's findings. Blue Buffalo does not agree with NAD's determination that the statement "Because the leading pet foods did not meet our standards, we developed a two-part product that combined a nutrition kibble with our exclusive LifeSource Bits—active nutrients and antioxidants 'cold formed' to preserve their potency" is a superiority claim. Nor does Blue Buffalo agree that the claim "feed your [pet] like you feed your family" in the context of advertisements discussing the healthy ingredients in BLUE pet foods conveys the message that BLUE pet foods are of human grade

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[14] NAD noted that this iteration of the "feed your family" claim is not in violation of AAFCO's rule that "Claims that a product contains or is made from ingredients that are. . . food(s) that you (the purchaser) would feed your own family, or similar claims, are false and misleading unless the entire product, itself, meets the USDA and FDA standard for foods edible by humans." As noted above, NAD determined that consumers would not take away a message from this advertisement that the pet food itself, or ingredients therein, would be edible by people.

quality. Nonetheless, in the spirit of cooperation with the self-regulatory process, Blue Buffalo will take NAD's recommendations into account in future advertising.

Blue Buffalo is particularly disappointed that NAD recommended that it discontinue its "no animal by-products" claims in connection with pet foods that contain lamb meal, fish meal, and/or liver. Blue Buffalo believes that its use of the term "by-products" is fully consistent with the Association of American Feed Control Officials (AAFCO) definitions, state regulatory enforcement, and industry usage of the term, particularly among many of Blue Buffalo's competitors. Blue Buffalo believes that its "no animal by-products" claims are fully substantiated. Accordingly, Blue Buffalo will appeal this portion of the decision to the NARB. **(#4892 JF, closed 07/31/2008)**

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