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# NAD Refers Wal-Mart's 'Raise in Pay' Advertising to FTC After Retailer Declines to Participate in an Advertising Review

*New York, NY – July 16, 2015* – The National Advertising Division has referred broadcast advertising from Wal-Mart Stores, Inc., to the Federal Trade Commission for review, after the company declined to participate in an NAD proceeding.

NAD is an investigative unit of the advertising industry's system of self-regulation. It is administered by the Council of Better Business Bureaus.

As part of its routine monitoring program, NAD reviewed a broadcast ad from Wal-Mart that promoted initiatives to increase company spending on higher pay, education and training for Wal-Mart employees.

NAD considered whether the advertising – "Raise in Pay" – implied that:

- *Wal-Mart raised wages of its employees from minimum wage to \$15 per hour.*
- *Wal-Mart raised the wages of its employees to a living wage, allowing them to earn enough to support themselves and/or their family.*
- *Wal-Mart's increased wages allows its employees to "build a future."*

The advertising at issue featured actors depicting a new father, a woman throwing a backyard party for her family and a man spending time with his mother.

As the vignettes played, a voiceover stated: "It's hard to build a future if you can't see past today ... That's why Wal-Mart is investing in the most important part of our company, our people."

The action then shifted to a Wal-Mart store, where the indicator for check-out lane "15" lit up in an apparent reference to the \$15-per-hour minimum wage goal of many wage activists and the voiceover stated that "a raise in pay ... raises us all."

The commercial closed with an onscreen end card that read: "We are investing over \$1 billion this year in higher wages, education and training."

In response to NAD's initial inquiry, Wal-mart advised NAD that it respectfully declined to participate on the grounds that NAD lacked jurisdiction.

Wal-mart disagreed that the commercial conveyed any implied messages that required substantiation. The company contended that whether the commercial made any implied claims, support for such claims was outside NAD's mandate and that NAD did not have the expertise, bandwidth or procedures to fairly collect, analyze and evaluate the relevant facts and related policies to address the issues that the inquire raised. Further, Wal-Mart maintained that to the extent NAD might make recommendations regarding the allegedly implied claims, the abbreviated nature of an NAD proceeding would not provide Wal-Mart with reliable and actionable guidance regarding communications related to its commitment to its associates or "contribute meaningfully to the larger policy debate implicated by the proposed implied claims."

NAD noted in its decision that an advertisement designed to inform consumers about Wal-Mart's values as a company and to encourage potential customers to patronize Wal-Mart stores "is clearly a commercial message within the definition of 'national advertising' in ASRC Procedures.

Regarding the advertiser's argument that Wal-Mart's substantiation for this claim is so technical in character that NAD could not conduct a meaningful analysis of the issue, NAD noted that it reviews highly technical matters on a variety of issues on a consistent basis, including highly technical statistical analysis and claims that need to be supported across the U.S. population as a whole.

"The questions at issue here, including those related to a 'living wage,' are not any more technical than many issues carefully and thoroughly addressed by NAD in prior decisions," NAD stated in its decision.

In light of the advertiser's election not to participate in the self-regulatory process, NAD has referred the matter to the FTC for review.

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