

Practical examples

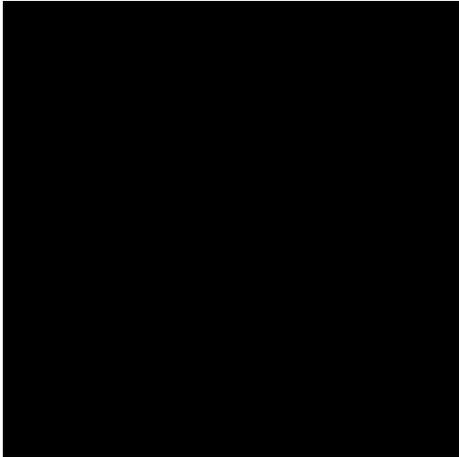


Arnold & Porter

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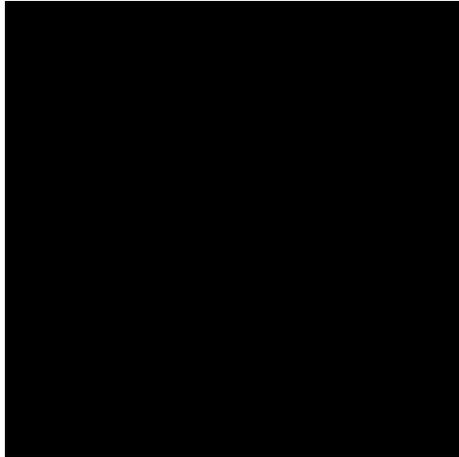
09 October 2025

Viagra v Viacrème gel



“ Viacrème is a response to women’s wish to benefit from the equivalent of the little blue pill.

”



Discussion: *CareDx, Inc. v. Natera, Inc.*

- CareDx and Natera sell competing tests called AlloSure and Prospera, respectively, that use DNA to detect whether a patient's body has rejected a transplanted kidney.
- Natera's advertisements (e.g. physician brochures, press releases, etc.) pointed to results from two studies, one by Natera on Prospera and one by CareDx on AlloSure, to claim Prospera's superiority.
- Studies had different designs and methods: Multi-site vs. single-site, prospective selection vs. already-existing patient samples. Testimony that head-to-head comparison of study results not possible due to these and other factors.
- CareDx sued, alleging that Natera falsely advertised that Prospera was superior to AlloSure in identifying organ rejection



Article

Optimizing Detection of Kidney Transplant Rejection: A Prospective, Multi-Center Study
Assessment of Donor-Derived Cell-Free DNA by
Massively Multiplex PCR

CLINICAL RESEARCH

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Cell-Free DNA and Active Rejection in Kidney Allografts

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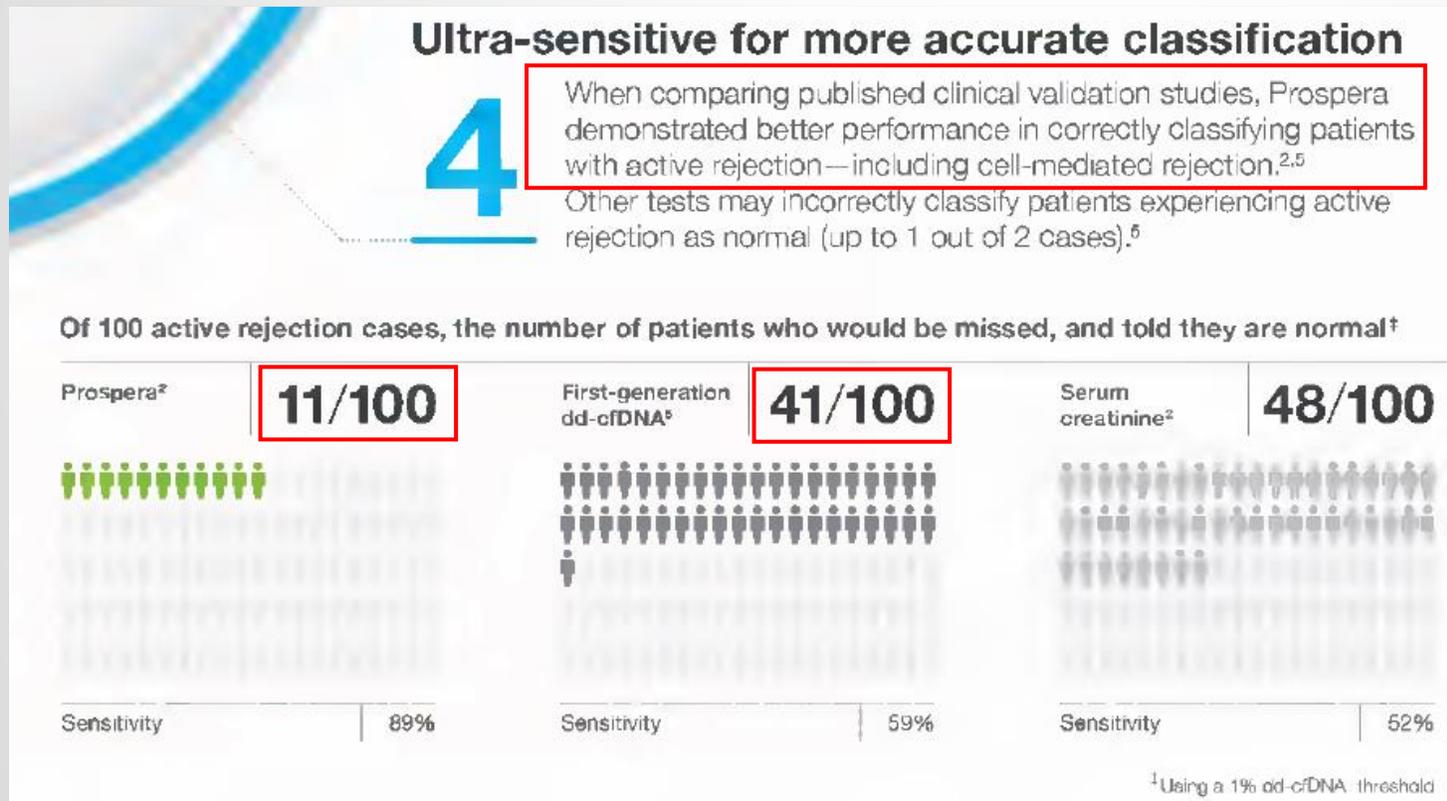
Discussion: CareDx, Inc. v. Natera, Inc.

- Claim B: Natera advertised that, “[w]hen comparing published clinical validation studies, Prospera demonstrated better performance in correctly classifying patients with active rejection,” and then compared Prospera's sensitivity of 89%, with AlloSure's sensitivity of 59%.



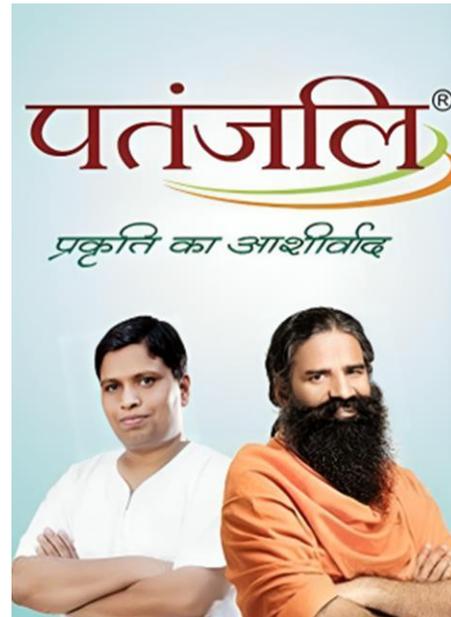
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Delhi High Court: Health/Nutrition Ads Need Scientific Proof

Dabur India Ltd. v. Patanjali Ayurved Ltd. CS(COMM) 187/2025



The Case

- Patanjali's Ad **claimed its Chyawanprash superior due to fewer preservatives**, better Ayurvedic formulation.

Court Ruling

- The Court emphasized that health supplement comparisons must meet a high evidentiary threshold.
- Court required ad modification

Key Principle

Comparative **claims in the health and nutrition space must be accurate, scientifically supported, and not imply that rival products are unsafe or inferior.**

Storyline of the TVC and Print Advertisements

	<p>"Jinko Ayurved aur Vedon ka gyaan nahi" Translation: Those who do not possess knowledge of Ayurveda or the Vedas.</p>		<p>Aur kesar yukta Translation: And with Saffron</p>
	<p>"Charak, Sushrut, Dhanvantri aur Chyawan Rishi" Translation: Charak, Sushrut, Dhanvantri, and Chyawan Rishi</p>		<p>Patanjali Special Chyawanprash banaya Translation: We have prepared Patanjali Special Chyawanprash</p>
	<p>"Ki parampara ke anuroop, original Chyawanprash kaise bana paayenge?" Translation: In accordance with the said traditions/procedures, how will they prepare original Chyawanprash?</p>		<p>Jo aapke shareer ko medicalstore banne se bachata hai Translation: Which prevents your bodies from becoming a medical store</p>
	<p>Humne rishiyon ki virasat Translation: We, who possess the heritage of Sages</p>		<p>Aapke masson bacchon aur parivar ke immunity ko badhata hai. Translation: And boosts the immunity of your innocent children and families</p>
	<p>"Aur vigyan ke anusar 51 beshkeemti jadi bootiyan" Translation: And based on their (sages') knowledge, using 51 priceless medicinal herbs.</p>		<p>Jab shreshtam Patanjali Chyawanprash hai Translation: When the best Chyawanprash, i.e., Patanjali, is there ...</p>
	<p>Toh ordinary Chyawanprashmkyu? Translation: ...Then why choose ordinary Chyawanprash?</p>		<p>Toh ordinary Chyawanprashmkyu? Translation: ...Then why choose ordinary Chyawanprash?</p>

PATANJALI®



Why settle for ordinary Chyawanprash made with 40 herbs?

When Patanjali, a supreme Ayurvedic institution that truly follows the tradition established by great sages Sushrut, Charak and Chyawan, offers the best

Patanjali Special Chyawanprash made with 51 precious herbs and saffron.

It protects against cough and cold, strengthens respiratory system and empowers you to fight hundreds of diseases.

Ayurvedic Superfood that boosts immunity, keeps diseases at bay, and keeps you young forever.

Ensure giving Balprash to children for providing complete nutrition, sharp memory and super immunity to them.

For diabetics, Chyawanprashin (With no added sugar) is available.



For the first time in the world reputed research journal - Frontiers in Pharmacology* has published a research paper on only Patanjali Chyawanprash. This research paper verifies the Patanjali Special Chyawanprash as the best Chyawanprash that reduces inflammation and boosts immunity.

www.ncbi.nlm.nih.gov/pmc/articles/PMC6633414/

Shop Online - www.patanjaliayurved.net | Customer Care Number - 18001894108

Order Patanjali Products Online from ORDER ME APP

75. Considering the aforesaid principles and detailed discussion in the preceding paragraphs, that as the product in question is an ASU drug which is regulated under the Drugs and Cosmetics Act, the issue of disparagement has to be examined at a stricter threshold, a strong *prima facie* case of disparagement is apparent in both forms of advertisements, i.e., TVC and Print.

76. The submissions made on behalf of the defendants that interim relief can only be in aid of final relief, and that the final relief cannot be granted by way of interim relief, is an established principle of law. However, this Court has the authority to pass interim orders when *prima facie* case is established, along with other factors like balance of convenience and irreparable damage. The injunction prayed by way of the present applications is interim in nature. On the other hand, the final prayer in the suit pertains to permanent injunction, which is different from the interim injunction as sought by way of the present applications.

77. This Court further takes into account that the remedy of injunction has a larger role to play in matters of defamation or disparagement as pecuniary compensation cannot be enough to compensate such defamation. Thus, a Division Bench of the Madras High Court in the case of *Gillette India Limited Versus Reckitt Benckiser (India) Private Limited*¹⁹, has held as under:

103. In granting interim relief of injunction, the Court is required to examine whether the plaintiff has made out a strong prima facie case, whether pecuniary compensation would afford the plaintiff applicant for injunction adequate relief and whether the balance of convenience is in favour of passing of an interim order in favour of

the plaintiff applicant.

104. In judging the balance of convenience, the Court would have to weigh the competing interest of the applicant for injunction and the party opposing injunction and address to itself the question of who would suffer greater prejudice - the plaintiff applicant for injunction by refusal of injunction, if the proceedings ultimately succeeded, or the respondent by grant of injunction, if the suit ultimately failed.

105. If in a suit for disparagement in relation to an advertisement a strong prima facie case of disparagement is made out, injunction would necessarily have to be granted, for pecuniary compensation could never compensate defamation and/or disparagement. By grant of injunction, the opposite party would only be restrained from disparaging the applicant for injunction till a final decision was taken by the Court. The prejudice to the applicant for injunction by continuous exhibition of disparaging advertisements would be irreparable, and far greater than the prejudice to the opposite party, if the applicant ultimately succeeded.

(Emphasis Supplied)

78. Considering the aforesaid detailed discussion, the plaintiff has established a strong *prima facie* case in its favour. Balance of convenience also lies in favour of the plaintiff and against the defendants. Further, the plaintiff shall suffer irreparable loss, including loss of reputation, if interim relief, as prayed in the present applications, is not granted.

79. In view of the discussion hereinabove, this Court directs that from the Print Advertisements, the defendants shall delete the first two lines, i.e., *Why settle for ordinary Chyawanprash made with 40 herbs?*². The defendants can accordingly modify the impugned Print Advertisements in both Hindi and English languages.

80. Similarly, as regards the impugned TVC, the defendants are directed to delete the lines as given in the first three columns of the table showing the story board of the impugned TVC, i.e., *Jinko Ayurved or Vedon ka gyaran nahi Charak, Sushra, Dharmavatri aur Chyawanrishi Ki Parampara ke*

Anuroop, original Chyawanprash kaise bana payenge'. Similarly, the defendants are directed to delete the lines as given in the last column of the table showing the story board of the impugned TVC, *Toh ordinary Chyawanprash kya*', from their TVC.

81. The defendants shall be allowed to run the impugned Print Advertisements and TVC after the aforesaid modifications.

82. The other issues, as raised before this Court with regard to use of the word 'special', communication regarding '51 precious herbs', presence of 'mercury' in defendants' product, and other claims made by the defendants in their impugned Print Advertisements and TVC, are subject matter of trial in the suit.

83. It is clarified that the observations made herein pertain to adjudication of the interim applications only. Nothing contained herein shall be construed as final expression on the merits of the case.

84. Accordingly, the defendants are restrained from publishing the impugned Print Advertisements and airing the impugned TVC.

85. With the aforesaid directions, the present applications are accordingly disposed of.

**(MINI PUSHKARNA)
JUDGE**

JULY 03, 2025
Ak/Au

Atlantic Nature and PILEJE V Arkopharma

- **Comparative Table:** The advertisement included a table comparing active ingredient levels across capsules from ATLANTIC NATURE, PILEGE, SID NUTRITION, and ARKOPHARMA.
- **Implied Superiority:** The advertisement suggested ARKOPHARMA's products were superior based on the higher levels of sesquiterpene acids.

Problem:
Plant-based medicine versus a dietary supplement



PiLeJe



Atlantic Nature



ArkoPHARMA

Panel Discussion: *CareDx, Inc. v. Natera, Inc.*

- Claim H: “Unparalleled Precision. Optimized by Prospera”:



Any question ?

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