

Legal Protection for Consumers Related to Skincare Products and Bodycare Overclaim

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Abstract

The rise of misleading marketing practices in the midst of the rapid cosmetics industry, which results in losses for consumers, both material and immaterial. This study aims to identify forms of legal protection for consumers who are victims of overclaims and evaluate the role of the Food and Drug Supervisory Agency in handling these cases, using an empirical legal research method, primary data is obtained through questionnaires from consumers, while secondary data is obtained from literature studies, then analyzed qualitatively-descriptively. The results of the study show that business actors are prohibited from advertising or promoting goods incorrectly or misleadingly, including through overclaim. Violation of this article violates the consumer's right to honest and correct information. However, overclaim practices still often occur due to low compliance of business actors and lack of effective supervision and enforcement. Food and Drug Supervisory Agencies have a crucial role in pre-market to post-market oversight and enforcement, but face challenges in broad market coverage and digital dynamics. It is hoped that this thesis can provide a comprehensive understanding of rights and obligations in the context of overclaim, increase consumer awareness, encourage compliance of business actors, and become an input for the government and the Food and Drug Supervisory Agency in formulating more protective policies and effective law enforcement mechanisms to create a responsible cosmetics market.

Keywords: Legal Protection; Consumer; Overclaim.

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INTRODUCTION

As the times develop, both women and men from teenagers to adults want to look *goodlooking*, so not a few of them are willing to spend their money on treatments and buy *skincare* and *bodycare* products to take care of and beautify themselves. Therefore, the cosmetics industry has experienced very rapid growth in recent years.

Skin care can be done at beauty clinics that are handled directly by dermatologists and *aesthetic* doctors. However, doing treatments at beauty clinics requires relatively expensive costs so many people choose treatment independently by buying *skincare* and *bodycare* products. This is supported by the many *skincare* and *bodycare* products sold according to skin type, such as *dry skin*, *oily skin*, *combination skin*, and *sensitive skin*) and can be adjusted based on each individual's skin problems, such as *acne-prone skin*, *brightening*, *maintaining moisture*, *protecting from UV-A UV-B rays*, and so on¹. The use of *skincare* and *bodycare* in Indonesia can be said to be increasing from year to year. The increase in interest in *skincare* and *bodycare* products is evidenced by an increase in the total revenue of cosmetics industry

¹ Adinda Ayu Puspita Kuncoro, "Perlindungan Hukum Konsumen Terhadap Penggunaan Kata Overclaimed Pada Iklan Produk Skincare," 2024.

products in the period 2021-2024 which has increased by 48%, namely from USD 1.31 billion or around IDR.21.45 trillion in 2021, to USD 1.94 billion or around IDR.31.77 trillion in 2024².

Expansive conditions are also seen in the addition of cosmetic business actors. Based on data from the Food and Drug Supervisory Agency, cosmetics business actors who are members of the Indonesian Cosmetics Company Association have increased from 819 business actors in 2021 to 1,039 business actors at the end of 2023. Furthermore, in 2024, the number of Small and Medium Cosmetics Industries in Indonesia will reach more than 1,500 business units spread across various regions. They are engaged in various fields such as *skincare*, *makeup*, perfume, and *bodycare products*. The rapid development of the Small and Medium Cosmetics Industry is driven by several factors, including increasing public awareness of personal care, trends in the use of natural products, and the development of *e-commerce* that facilitates market access³.

A variety of *skincare* and *bodycare* products are on the market, offered with various brands, prices, and claims regarding superior and premium quality. In the current era of trade that is very easy and free, business actors carry out strategies to maintain their business and get business profits, so that business actors promote or advertise their products. When promoting or advertising products, business actors provide information related to the products sold, with this information, potential consumers can buy products according to their needs. Providing true, clear, and honest information is one of the obligations of business actors and rights that must be fulfilled by business actors to consumers. This is because product information in advertising is a form of business actors' promises to their consumers.

Article 7 letter b of Law Number 8 of 1999 concerning Consumer Protection (Consumer Protection Law) regulates the obligation for business actors to provide true, clear, and honest information about the condition and warranty of goods and/or services, as well as provide an explanation of use, repair, and maintenance. Article 4 letter c of the Consumer Protection Law explains that related to consumer rights that must be fulfilled, that is, the right to true, clear, and honest information about the condition and warranty of goods and/or services.

The increasing business of *skincare* and *bodycare* products in Indonesia has resulted in increased business competition, this has resulted in business actors carrying out various strategies in advertising their products. One of the strategies for advertising *skincare* and *bodycare* products that are often found is overclaim. The definition of *product overclaim* is information related to product claims that are made excessively.⁴ The purpose of this marketing strategy is used so that consumers are more interested in the products offered and to captivate consumers so that consumers feel the desire to own the product, even though the marketing is misleading or misleading to consumers.

The inclusion of claims on *skincare* and *bodycare products* is required to fulfill the elements of objectivity, truthfulness, and also not misleading. In addition, in the inclusion of claims, the materials used must be listed in the formula or composition. Article 4 letter c of the Consumer Protection Law explains that consumers have the right to true, clear, and honest information about the condition and warranty of goods and/or services.

² "Pasar-Kosmetik-Indonesia-Melesat-48-Persen-Peluang-Ikm-Berinovasi @ Indonesia.Go.Id," n.d.

³ "Pasar-Kosmetik-Indonesia-Melesat-48-Persen-Peluang-Ikm-Berinovasi @ Indonesia.Go.Id."

⁴ Syofiya Sutia Nabilah, "Perlindungan Hukum Terhadap Konsumen Atas Perbuatan Overclaimed Dalam Promosi Oleh Influencer Pada Suatu Produk Skincare," *Ayan* 15, no. 1 (2024): 37-48.

Regulation of the Food and Drug Supervisory Agency Number 3 of 2016 concerning Technical Guidelines for Cosmetic Advertising Supervision and Number 3 of 2022 concerning Technical Requirements for Cosmetic Claims states that there is a prohibition on claims that are not allowed or do not meet the provisions, among others; Eliminate acne, reduce scars, make the skin smoother, tighten the face, blackhead-free, whiten the face, make the skin more supple, stimulate collagen formation, repair damaged skin texture, control sebum/oil production, etc (there are 119 unauthorized claims)⁵. Reviewing directly on the marketing of *skincare* and *bodycare* sales, business actors make these claims as advertising sentences to provide information on advantages or advantages on a product so as to make consumers make purchases in the hope of getting appropriate results like the claims promised in the product marketing advertisement.

There are several products that have been proven *to be overclaimed*, including products with the SS brand, one of the *bodycare* products, namely *body lotion* which is claimed to contain 1% niacinamide, but after lab testing, the niacinamide level is only 0.0062%. In addition, products with the Azarine brand are one of the *retinol skincare* serums which is claimed to contain 1% retinol, but after lab testing only contains 0.00095% retinol, it is almost undetectable. There is a *Bioaqua brand* skincare product that also *overclaims* one of its products, namely Symwhite 377 Whitening & Fade Dark Spot Cream which claims a niacinamide content of 5% but the lab test results showed a niacinamide level of 0.0048%. In addition, there is also *bodycare* in the form of *Davienna brand body lotion* which claims to brighten but the results of lab tests on the content of niacinamide were not detected, so there are no brightening ingredients in it. There are still many business actors who still use claim information that contains the word *overclaim* or *overstatement* as their marketing strategy and result in consumers experiencing both material losses. Based on this background description, the author is interested in conducting research to find out more about how to protect consumers related to overclaimed *skincare* and *bodycare* products based on Law Number 8 of 1999 concerning consumer protection.

METHODS OF THE RESEARCH

The type of research used in this writing is empirical (*empirical law research*). Empirical juridical research is legal research conducted directly on respondents to obtain primary data. Primary data in empirical research is the main data. In addition to primary data in this study, it is also supported by secondary data obtained from literature studies. All the collected data are then analyzed and discussed qualitatively-descriptively, with this research method the author can analyze the facts that occur in the community, so that it can produce juridical studies, conclusions, and suggestions related to legal protection for consumers related to overclaimed *skincare* and *bodycare* products based on Law Number 8 of 1999 concerning consumer protection.

RESULTS AND DISCUSSION

A. Legal Protection for Consumers for Overclaims on *Skincare* and *Bodycare* Products

The framework of the legal relationship between business actors and consumers, buying and selling is defined as an agreement that binds the seller and the buyer, where one party hands over the object and the other party pays the agreed price, with a consensual obligator

⁵ BPOM, "Peraturan Badan Pengawas Obat Dan Makanan Nomor 3 Tahun 2022 Tentang Persyaratan Teknis Klaim Kosmetika," *Badan Pengawas Obat Dan Makanan Republik Indonesia*, 2022, 1-33.

character⁶. In the modern era, these transactions extend through *e-commerce*, which offers speed, wide reach, and marketing effectiveness. However, in the midst of this convenience, it is not uncommon to find prohibited business practices, including false acts, misleading statements about the nature, characteristics, standards, or quality of goods, false advertisements, and the sale of products that do not meet consumer safety or information standards.

Skincare is an activity carried out to treat or improve the condition of facial skin.⁷ Skincare products include facial soaps, facial moisturizers, serums, *suncreeen*, *toners*, face masks, and so on. Body care or *bodycare* is a series of treatments that are carried out to maintain the health, cleanliness, and beauty of the skin of the body and the whole.⁸ Bodycare products include bath soap, *body lotion*, *body serum*, bath scrub, and so on.

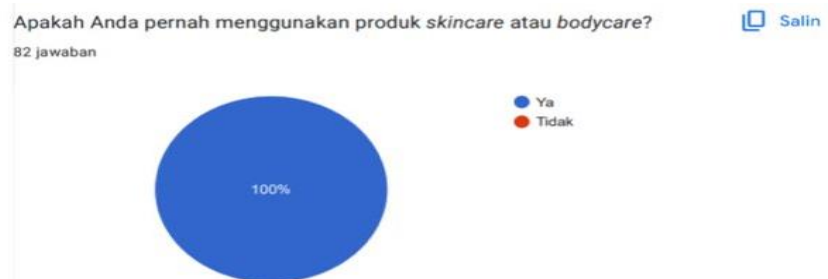


Figure 1. Number of Skincare and Bodycare Users

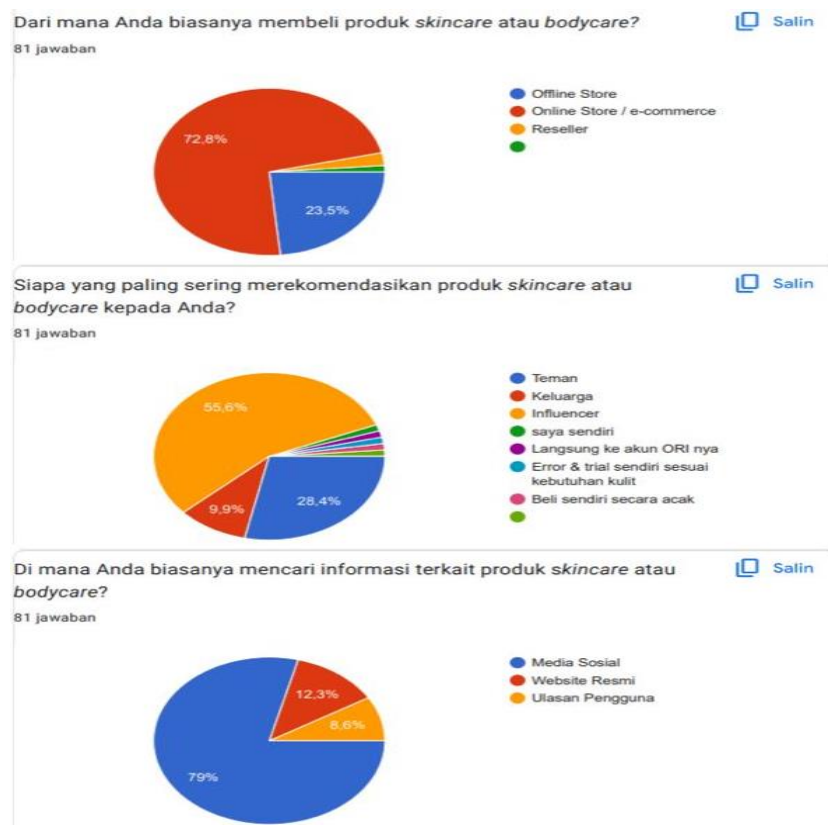


Figure 2. Skincare and Bodycare Purchase Information

⁶ Kuncoro, "Perlindungan Hukum Konsumen Terhadap Penggunaan Kata Overclaimed Pada Iklan Produk Skincare."

⁷ Heni Marlina et al., "Perlindungan Hukum Bagi Konsumen Atas Overclaim Produk Skincare Di Platform E-Commerce Legal Protection for Consumers Against Overclaim of Skincare Products on E-Commerce Platforms," n.d.

⁸ Monarisa Salsabila, "Perlindungan Konsumen Terhadap Produk Kosmetik Yang Dijual Secara Online Di Kota Banda Aceh," *Jurnal Fakultas Hukum Universitas Syiah Kuala* 7, no. 1 (2015): 1–13.

This study shows that *overclaim* is product information that is made excessively, not in accordance with facts, misleading, hiding something, and promising uncertain things to consumers. This practice is a form of dishonesty in promotion that aims to attract consumers unethically and often to the detriment, because the product cannot meet the expectations that have been built by such excessive claims. Questionnaire data showed that 100% of panelists use *skincare* and *bodycare*, with 72.8% buying through *online stores* or *e-commerce*, showing the dominance of digital platforms in transactions. Consumer interest is strongly influenced by *influencer reviews* (55.6%) and information from social media and *official online stores* (79%), indicating that product information comes not only from packaging but also from *reviews* and social media.



Figure 3. Review of Skincare and Bodycare Results

Selain itu, berdasarkan hasil kuesioner sebanyak 71,6% dari 82 panelis mengatakan bahwasannya produk *skincare* dan *bodycare* yang mereka gunakan tidak memberikan hasil sesuai dengan klaimnya. Padahal para konsumen memilih produk tersebut karena sudah memiliki sertifikasi Badan Pengawas Obat dan Makanan (62,5%) yang sudah jelas izin edar

dan keamanannya, serta testimoni produk di sosial media maupun oleh *influencer* yang menjelaskan tentang klaim dan kualitasnya (31,3%). Oleh karena itu, konsumen merasa dirugikan dengan produk *skincare* dan *bodycare* yang *overclaim* (61,8% dari 82 panelis).

Article 7 letter b of the Consumer Protection Law expressly requires business actors to provide true, clear, and honest information about the condition and warranty of goods and/or services. In line with that, Article 4 letter c of the Consumer Protection Law explains consumers' rights to true, clear, and honest information. Furthermore, the Regulation of the Food and Drug Supervisory Agency Number 3 of 2016 concerning Technical Guidelines for Cosmetic Advertising Supervision and Number 3 of 2022 concerning Technical Requirements for Cosmetic Claims contains a prohibition of unauthorized claims (there are 119 unauthorized claims, such as "removing acne" or "whitening the face")⁹. This shows that the inclusion of claims on *skincare* and *bodycare* products must meet the elements of objectivity, truthfulness, and not misleading.

Despite clear regulations, the practice of *overclaiming* is still rampant. Research found several examples of products that were proven *to be overclaimed* based on laboratory tests, where the levels of the claimed active ingredient were significantly different from the reality (for example, SS and Bioaqua brand products that claim Niacinamide, or Azarine that claim Retinol, but the levels are very low or undetectable). This is due to the low awareness of business actors to legal and business consequences, as well as the lack of effective law enforcement. Fierce business competition encourages business actors to use *overclaims* as a marketing strategy for profit without caring about consumer losses.

The losses suffered by consumers due to *overclaims* are not only material (e.g., money wasted), but also immaterial (such as wasted time, negative effects on the skin, or emotional disappointment). Overclaims also violate the human rights of consumers, especially the right to health and safety, which is guaranteed by Article 28H paragraph (1) of the Constitution of the Republic of Indonesia of 1945 and Article 4 of Law Number 36 of 2009 concerning Health¹⁰. Consumer safety and security have a close relationship with human rights, in the 1945 Law of the Republic of Indonesia it is emphasized that health is important and included in human rights. Human rights owned by everyone must be protected and must not be limited by anything.¹¹ The Consumer Protection Act is here to provide clear legal certainty for both parties in the buying and selling relationship, ensuring that neither party acts arbitrarily to the detriment of consumers.

B. The Participation of the Food and Drug Supervisory Agency in Handling *Overclaim* Cases on *Skincare* and *Bodycare* Products That Are Already Circulating on the Market

The Food and Drug Control Agency is a non-ministerial government agency in Indonesia that is fully responsible for the supervision of drug and food circulation¹². This supervision includes a pre-market control system, which is before the product is distributed, to post-market control, which is after the product is circulated in the market. This form of supervision is part of law enforcement against violations in the drug and food sectors. The main purpose of the establishment of the Food and Drug Control Agency is to ensure the

⁹ BPOM, "Peraturan Badan Pengawas Obat Dan Makanan Nomor 3 Tahun 2022 Tentang Persyaratan Teknis Klaim Kosmetika."

¹⁰ Bunga Permata, Sulatri, Kristina Sari, "Perlindungan Hukum Terhadap Konsumen Terkait *Overclaim* Pelaku Usaha Dalam Label Obat Ditinjau Dari Pasal 8 Ayat (1) Huruf d Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *Jurnal Ilmiah Fakultas Hukum*, no. April (2022): 89-100.

¹¹ Nabilah, "Perlindungan Hukum Terhadap Konsumen Atas Perbuatan *Overclaimed* Dalam Promosi Oleh Influencer Pada Suatu Produk *Skincare*."

¹² BPOM, "Peraturan Badan Pengawas Obat Dan Makanan Nomor 3 Tahun 2022 Tentang Persyaratan Teknis Klaim Kosmetika."

quality, usefulness, and safety of products for the community.¹³ The legal basis for the authority of the Food and Drug Supervisory Agency is regulated in the Presidential Regulation of the Republic of Indonesia Number 80 of 2017 concerning the Food and Drug Supervisory Agency. Based on Article 2, the Food and Drug Supervisory Agency is tasked with organizing government affairs in the field of drug and food supervision, which includes drugs, medicinal ingredients, narcotics, psychotropics, precursors, addictive substances, traditional medicines, health supplements, cosmetics, and processed foods. Cosmetics are clearly included in the types of products supervised by the Food and Drug Supervisory Agency.

Article 4 of Presidential Regulation Number 80 of 2017 details the authority of the Food and Drug Supervisory Agency, including: 1) Issuing product distribution permits and certificates in accordance with safety, efficacy/benefits, quality, and product testing standards. This ensures that the products in circulation have met the set standards; 2) Conducting investigations in the field of drug and food supervision. This investigation aims to ensure the practices of manufacturers and distributors are in accordance with the law and protect consumers from risks; 3) Provide administrative sanctions to parties who violate the regulations. These sanctions are imposed to enforce compliance and ensure the safety and quality of products in the community.

Supervision carried out by the Food and Drug Control Agency includes several stages: 1) Preliminary Control: Carried out before a product is circulated to prevent irregularities; 2) Concurrent Control: Carried out when the work is in progress, such as teaching subordinates to ensure that the goal is achieved; 3) Feed Back Control: Measuring the results of activities that have been carried out to identify deviations from applicable standards¹⁴. In addition, the Food and Drug Supervisory Agency also has regulations related to advertising and claims. Food and Drug Supervisory Agency Regulation Number 32 of 2021 concerning Cosmetic Advertising Supervision states that advertising information must meet objective criteria (according to reality), not misleading (honest, accurate, responsible), and not state as if it is a drug¹⁵.

In addition to supervising the circulation of food and drugs over the supervision of cosmetic products, the role of supervision of the Food and Drug Supervisory Agency as stipulated in Article 3 of the Regulation of the Food and Drug Supervisory Agency Number 26 of 2017 concerning the Organization and Work Procedures of the Food and Drug Supervisory Agency is as follows¹⁶: 1) Conducting policy formulation in the national context in the field of drug and food supervision; 2) Implement national policies that have been established in the field of drug and food supervision; 3) Preparing and determining norms, standards, procedures and criteria in the field of supervision before circulation and conducting supervision during circulation; 4) Conducting supervision before circulation and supervision during circulation; 5) Coordinating to carry out drug and food supervision with government agencies at the central and regional levels; 6) Providing technical guidance in the field of drug and food supervision; 7) Taking action against violations of the provisions of laws and regulations in the field of drug and food supervision; 8) Coordinate

¹³ AA Putri Ganitri Windrahayu Widiarta, "Perlindungan Konsumen Terhadap Produk Skincare Tanpa Label Bahasa Indonesia," *Jurnal Kertha Desa* 8, no. 7 (2020): 1-11.

¹⁴ Rafiqi Zul Hilmi, Ratih Hurriyati, and Lisnawati, "Peran Balai Besar Pengawas Obat Dan Makanan (BBPOM) Dalam Pengawasan Kosmetik Tanpa Izin Edar Di Kota Makassar" 3, no. 2 (2018): 91-102.

¹⁵ BPOM, "Peraturan Badan Pengawas Obat Dan Makanan Nomor 3 Tahun 2022 Tentang Persyaratan Teknis Klaim Kosmetika."

¹⁶ Aqsa Qazwani Haqkul Akbar, "Perlindungan Hukum Bagi Konsumen Terhadap Peredaran Kosmetik Yang Berbahaya (Studi Kasus BPOM Di Mataram)" 3 (2020): 216-24, <http://repository.ummat.ac.id/id/eprint/1734>.

to carry out duties, coaching and provide administrative support to all elements of the organization within the Food and Drug Supervisory Agency; 9) Managing state property/assets that are the responsibility of the Food and Drug Supervisory Agency; 10) Supervise the implementation in the field of the environment of the Food and Drug Supervisory Agency; 11) Carry out substantive support to all organizational elements within the Food and Drug Control Agency.

So that in general, the function and role of the Food and Drug Supervisory Agency is to supervise products circulating in the community to determine that products circulating in the community are guaranteed quality and safety. As well as granting circulating product permits, so that when there is an overclaim action from business actors, it proves that the Food and Drug Supervisory Agency conceded in carrying out its duties and functions. Products that present information that is not in accordance with the original should not be circulated in the community, because it is the same as presenting invalid information, there will be a great opportunity to cause losses for consumers starting from material because consumers have spent a certain amount of funds (money) to buy skincare and bodycare products. Another disadvantage is in terms of immaterial because consumers have given full trust to decide to buy products because of their usefulness. High expectations give consumers expectations to get maximum results from the product, but if it turns out that the information provided is not in accordance with the original content, of course, the results obtained from the use of the product are not in accordance with the expectations expected at the beginning. This will certainly cause losses for consumers.

Although the Food and Drug Supervisory Agency has a strong role and authority, there are still frequent circulation of cosmetics with harmful ingredients or misleading claims (*overclaims*) in the market. This shows that the supervision carried out by the Food and Drug Supervisory Agency has not been fully effective. This research underscores the importance of strict supervision of *skincare* and *bodycare* products, especially in checking the information contained on the product whether it is in accordance with its original condition. Many cases of overclaim occur because business actors exaggerate the content of the product, so that consumers believe inaccurate information, which ultimately harms consumers materially and immaterially. However, basically many challenges are faced, including low compliance of business actors and wide market coverage, especially in the digital era, requiring extra supervision efforts and consistent law enforcement to protect consumers from overclaim practices.

CONCLUSION

The sale of skincare and body care products is often found to be *overclaimed* by business actors. Claims that do not match reality, whether conveyed through advertisements, influencers, or product descriptions, have been proven to cause material and immaterial losses to consumers. The practice of *overclaiming* is not just a marketing strategy, but a serious violation of the Consumer Protection Law. The regulation clearly regulates the right of consumers to obtain correct and honest information, as well as the obligation of business actors to present accurate information and prohibit misleading promotions. Moreover, the act of *overclaiming* also ignores the fundamental right of consumers to health and safety, which is part of human rights. The Food and Drug Supervisory Agency plays a crucial role as a non-ministerial institution that is fully responsible for the supervision of the circulation of drugs, food, and cosmetics in Indonesia. The duties of the Food and Drug Supervisory

Agency include *pre-market* to *post-market control* to ensure the quality, benefits, and safety of products for the community. The authority of the Food and Drug Control Agency includes the issuance of distribution permits, product testing, investigations, and the imposition of administrative sanctions for violations. A big challenge arises from the practice of *overclaiming* skincare and bodycare products, which often misleads consumers. Many business actors still ignore legal provisions for profit, resulting in material and immaterial losses for consumers who are exposed to dishonest information. These exaggerated claims are clearly in conflict with the Food and Drug Administration's Regulation on Cosmetic Advertising Supervision and the Food and Drug Supervisory Agency's Regulation on Technical Requirements for Cosmetic Claims, which require that product information be objective, not misleading, honest, fair, provable, and clear and easy to understand.

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