

ENERGIZER PERSONAL CARE

Schick Intuition Plus Renewing Moisture Razor

Challenger: *The Gillette Company*

- **It is well-established that an advertiser is obligated to support all reasonable interpretations of claims made in its advertising, even messages it did not intend to convey.**

Basis of Inquiry: Claims made by Energizer Personal Care, LLC in television and Internet advertisements and on product packaging for its Schick Intuition Plus razor, were challenged by The Gillette Company, manufacturer of competing razors including the Venus Breeze. The following are representative of the claims that served as the basis for this inquiry:

Express Claims:

“lathers, shaves and moisturizes in one easy step.”

“The only razor that lathers and moisturizes, as you shave. Leaving your skin noticeably softer.”

Implied Claim:

Schick Intuition Plus provides a long-term post-shave moisturization benefit akin to leave-on moisturizing lotion.

Challenger’s Position:

I. The Challenger’s Position that the Advertiser’s Moisturization Claims are False and Misleading

A. The Advertiser’s Claims Convey the Implied Message that Schick Intuition Plus Renewing Moisture Razor Confers a Long-Term Moisturizing Benefit

The challenger asserted that the advertiser’s moisturization claims for its Intuition Plus Renewing Moisture razor convey the implied message of a consumer-meaningful moisturization effect, akin to that achieved through a topical, leave-on moisturizing lotion or in-shower moisturizer. Indeed, the challenger argued, the advertiser’s television commercial unqualifiedly claims that Intuition “lathers, shaves and moisturizes in one easy step.” along with various unqualified claims that the Intuition Plus “moisturizes.”

The challenger explained that shaving is a process that leaves skin in a condition inherently prone to dryness. The process of shaving itself exfoliates the surface of the skin (the stratum corneum) which acts as both a protective barrier to water loss and as a protective interface with the environment, thus while shaving reduces this surface barrier making it more receptive to moisturizer after mechanical exfoliation, it also leads to greater loss of water through this exfoliated barrier, which can lead to dryness. The soap that is often used to provide a lubricating lather while shaving also has a drying effect. As such, in the period immediately post-shave, the skin will be expected to be inherently drier than pre-shave absent the use of any moisturizer. According to the challenger, a chemical analysis of the skin conditioning solid of the advertiser’s

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product indicates that it has a significant proportion of soap ingredients which will have such a drying effect. Indeed, the challenger argued, the drying effect of the soap's ingredients outweighs the moisturizing potential of other ingredients (i.e. glycerin) contained in the product.

The challenger rejected the advertiser's assertion that the challenged claims are adequately limited to the time frame of "as you shave." According to the challenger, the Intuition packaging states that the Intuition Plus razor is "the only razor that Lathers & Moisturizes, as you shave Leaving your Skin Noticeably Softer." The challenger argued that the clear meaning of this statement (like the "one step" statement in the television commercial) is that the single act of shaving with the razor also lathers and moisturizes, and that "as you shave" means that the razor delivers three benefits in a single step. The challenger further noted that there are no qualifications or limitations on this claim that might communicate that the moisturization benefit is limited to this "during the shave" time period.¹

The challenger argued that consumers would not understand the use of the phrase "as you shave" as limiting the period for which the benefit is available. Rather, the challenger posited, consumers would understand the phrase "as you shave" as referring to the time at which the activity to secure the moisturizing benefit (that is long-lasting) is carried out. The challenger contended that this is the only reasonable interpretation of the challenged claims because a moisturization benefit that is limited to the period of time "during the shave" and ends by the time the consumer steps out of the shower/bathroom, is not meaningful benefit.

It was the challenger's position that any such fleeting benefit is in stark contrast to the arid desert to lush oasis imagery of the advertiser's commercial and description of product performance (i.e. lasting moisturizing benefits) on the advertiser's web site.

B. The Challenger's Position that the Advertised Product does not Provide Significant Moisturization During or Post-Shaving

The challenger asserted that, even if consumers understand the advertiser's claims as being limited to a moisturization benefit *during* shaving, the advertiser's clinical testing using a Skicon device is insufficient to support such a claim. In this testing, baseline hydration measurements were taken at five points on the skin using the Skicon device. Testing was conducted comparing Intuition Plus against other test products including challenger's Venus Breeze, the Intuition Plus blade (without the surrounding solid, but substituting an Olay bar as the shave preparation), and the Intuition Plus blade (without the surrounding solid, but using a shave cream). Skicon measurements were then again taken at the same points as baseline.

¹ With respect to the advertiser's consumer use data, the challenger contended that it was unable to evaluate the adequacy of this data without any information about the manner in which the questions were posted, the choices consumers were given, which other questions were asked, or even the potentially-biasing order or number of questions. In any event, the challenger asserted that from the scant information provided, it is readily apparent that the questions posed were not reasonably calculated to gauge consumer sentiment concerning "moisturization" (all of the questions concerned "softness" which consumers are likely to associate with the feel of skin once hair has been removed or the skin has been exfoliated by the shaving process).

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- i. Measurements obtained 5, 10 and 15 minutes after shaving are insufficient to support the advertiser's moisturization claims*

In the first instance, the challenger contended, the effect of the wet environment while shaving significantly outweighs any traces of the purported moisturizing ingredients in the advertiser's product. In fact, the challenger noted, the moisturizing ingredients in Intuition plus are far down in the ingredient list.

The challenger further contended that the measurements taken in the advertiser's testing, obtained at 5, 10, and 15 minutes *after* shaving, were insufficient to substantiate its claims of moisture conferred by its product *during* the shave and cannot support consumer-meaningful moisturization claims.

The challenger asserted that the industry-standard measures of stratum corneum hydration relying on changes in the electrical properties of skin (such as use of a Corneometer) will be affected profoundly simply by the water used in the shaving process. Basic laboratory testing reveals that if tap water is left in passive contact with the skin with a resistance time of that of an average shave and then the skin is blotted dry, Corneometer values increase dramatically and remain elevated significantly for up to 10 minutes afterwards.²

For this reason, the challenger explained, European Group for Efficacy Measurements on Cosmetics & Other Topical (EEMCO) published peer-reviewed guidelines on the use of these electrical measures, with explicit directions to delay measurements until at least 30 minutes after treatment, due to a recognized 10-15 minutes "evaporation phase" of water from the applied treatment. In other words the EEMCO recommends waiting *30 minutes* to allow excess water to evaporate from the skin to avoid erroneous measurements of skin hydration. The challenger argued that measurements of the stratum corneum hydration performed within 10-15 minutes of shaving are simply invalid and irrelevant. In fact, the challenger asserted, companies that market moisturizing products designed to be left on the skin or washed off generally follow the recommendations of the EEMCO. The challenger asserted that the EEMCO recommendations reflect the standard expectation that any moisturization benefit is not merely fleeting (as the challenged advertisements imply) but rather outlives the application period and is capable of being measured at least 30 minutes after application.

The challenger pointed out that wet shaving involves a wet environment, and it can take up to 30 minutes for water to evaporate from the skin and for the skin to return to pre-treatment equilibrium. Thus, the challenger argued that any measurements taken with a Skicon device during the time period before skin returns to equilibrium could simply be a function of water still desorbing from the skin's surface.

² This is in the absence of mechanical agitation and blade interaction inherent in the shaving process (which increases Corneometer values to an even greater degree which consequent greater time to return to pre-application levels).

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In any event, the challenger further asserted that even if the advertiser's electrical skin measurement method was valid, tests done using this method prove that the advertiser's claim to be the "only" razor with these benefits is false

The challenger further asserted that it attempted to replicate the advertiser's data via independent laboratory testing to assess skin hydration pre-shave and at five post-shave points, using a paired comparison design and employing the Schick Intuition and the challenger's Venus Breeze. This testing demonstrated that at five minutes post-shave Corneometer measurements were significantly elevated as compared to baseline for Schick Intuition but that after this point in time dropped precipitously. Indeed, ten minutes post-shave the readings were only slightly higher than pre-shave baseline readings and by fifteen minutes (as the evaporation phase is complete), the readings were near or at baseline levels. Given that any moisturization benefit that Intuition Plus may have delivered during the shave has virtually disappeared within ten to fifteen minutes, the challenger asserted that it is false and misleading to claim that the moisturization benefit provided by Intuition Plus is responsible for leaving skin "noticeably softer." In fact, by the fifteen minute mark, the hydration levels for Intuition were no longer statistically significant at the 95% confidence level as compared to pre-shave baseline.

To the extent that Intuition moisturizes at all, the challenger asserted that its testing showed that its Venus Breeze conferred a similar benefit. Both products showed higher hydration readings at five minutes post-shave as compared to baseline and while both had declined dramatically by ten minutes post-shave, they were still significant as compared to baseline pre-shave values for both products. Moreover, while at the fifteen minute mark, the readings for Intuition were no longer statistically significant at the 95% level as compared to baseline, on certain days the Venus Breeze showed statistically significant higher readings at the fifteen and even thirty-minute post-shave point. As such, the challenger asserted, its Venus Breeze "moisturizes" at least as well as Schick Intuition Plus.

ii. The Advertiser's data are not controlled adequately to account for a changing baseline or other factors that inherently impact readings

The challenger also asserted that the advertiser's data are not adequately controlled to account for a changing baseline or other factors that inherently impact readings. When drier layers of stratum corneum are removed in the shaving process, lower layers of stratum corneum, which contain a higher concentration of natural moisturizing factors are exposed. The challenger argued that the advertiser had not controlled for the changes in baseline resulting from mechanical exfoliation rather than any moisturizing ingredients from Intuition Plus. Without knowing the amount of stratum corneum removed by shaving, there is no way to ascertain whether any variance in Skicon readings between different razors are attributable to differences in the relative "aggression" of razors removing different amounts of skin or from any moisturizing ingredients.

The challenger rejected the advertiser's argument that the Intuition Plus Skin Moisturizing Solid contributes a significant moisturization benefit while shaving. The challenger argued that the Skicon device is a piece of objective instrumentation and cannot discriminate between the effects of water or the presence of an electrically-conducting ingredient. The Skicon will measure the

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presence of all conductive materials that might be deposited on the skin surface both from the moisturizing solid and otherwise. The surfactants in the moisturizing solid are electrical conductors and give a 3-100x increase in the response of the Skicon over water alone. It is the challenger's position that the presence of the Intuition Plus solid cannot be credited for any moisturization benefit beyond that attributable to water absorption.

For example, the challenger asserted that it is possible that the Intuition Plus razor without the surrounding solid simply removed more layers of skin, thereby producing higher Skicon readings. Likewise, the challenger asserted that in the test without the solid (but using shaving cream) the shaving cream used could impact Skicon readings and the advertiser's failure to account for this further undermines any attempt to attribute any difference in readings to the moisturizing solid alone. Interestingly, but inexplicably, the challenger noted, the advertiser attributes the higher Skicon readings for its Intuition Plus to its moisturizing solid, but attributes the higher Skicon readings for Venus Breeze to the presence of water. The challenger asserted that the advertiser cannot have it both ways.

II. The Challenger's Position that the Advertiser's Claim that the Intuition Plus is the "Only Razor that Lathers and Moisturizes as You Shave" is False and Misleading:

With respect to the claim that the Intuition Plus is the "only razor that Lathers & Moisturizes as you Shave Leaving Your Skin Noticeably Softer," (emphasis added) the challenger argued that its Venus Breeze also has built-in shave gel bars that contain various moisturizing ingredients and provide a light lather when the razor is wet. Further, the challenger contended, to the extent that Intuition moisturizes, head-to-head testing shows that Venus Breeze delivers a similar benefit. In fact, the challenger argued that the clinical testing conducted by the advertiser showed that each and every product tested provided some benefit as compared to baseline at all time points. The challenger rejected the advertiser's argument that 5 minutes after the shave is the relevant time point for measuring moisturization during a shave and that the correct way to measure is to compare the measurements of both test products. Further, the challenger asserted that the base ingredients in both Intuition Plus and Venus Breeze are fatty acid soaps, so that when in contact with water and then agitated, the soaps form a lather.

Advertiser's Position:

The advertiser explained that it is generally accepted that a moisturizer hydrates the skin in one of two ways: (1) it may add moisture to the skin by depositing on the skin ingredients known as humectants; or (2) it may help retain water in the skin by depositing an impermeable layer of water-insoluble oily material on the skin surface to prevent the moisture from escaping. The Intuition Plus falls into the first category of moisturizers as its Skin Moisturizing Solid contains moisturizing ingredients such as glycerin, shea butter, and aloe, which add moisture to the skin.

The advertiser argued that its Intuition Plus moisturizes as consumers shave, and provides far superior moisturization during shaving than the challenger's Venus Breeze which, according to the advertiser, fails to provide any moisturization at all.

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I. The Advertiser's Claim, that Intuition Plus Renewing Moisture Razor Moisturizes, is Fully Substantiated and Properly Qualified:

- A. The moisturization claim is limited to "during shaving" as is claimed in the challenged advertisements.

Preliminarily, the advertiser asserted that the challenged claims are expressly qualified to limit its moisturization benefit to the shaving process. For example, the advertiser noted, it claims that the Intuition Plus, "lathers and moisturizes as you shave," "lathers, shaves, and moisturizes in one easy step," and that "the 4 blades of Schick's Intuition Plus exfoliate as you shave, preparing legs to maximize the impact of the moisturizers. The moisturizing ingredients found in Schick's Intuition Plus formulas provide a simple way to lather, shave, and add extra moisture immediately after the exfoliation process." (emphasis added). Clearly, the advertiser argued, its moisturization claims are tied to the shaving process. The latter claims specifically reflect the design of the Intuition Plus: the blades are positioned within the moisturizing solid so that as the blades shave and exfoliate, the skin is immediately moisturized.

The advertiser rejected the challenger's argument that the phrase "leaving the skin softer" conveys the message that the Intuition Plus provides a post-shave moisturization benefit akin to that achieved through use of a topical, leave-on moisturizer applied to the legs after shaving. Specifically, the advertiser argued that the word "leaving" does not suggest a long-term benefit but, rather, merely describes how consumers' legs feel right after they have shaved.

The advertiser also rejected the challenger's interpretation of the phrase "leaving your skin noticeably softer", asserting that the challenger takes this claim out of context. The advertiser argued that the challenger's interpretation requires parsing the advertisements sentences and disregarding the phrase "as you shave." The advertiser asserted that when read in context, as a whole, its advertisements make clear that the moisturization benefits of the Intuition Plus are provided to customers *during* the shave.

- B. The Advertiser's Claim that Intuition Plus Renewing Moisture Razor Moisturizes During Shaving is Substantiated by Reliable Scientific Evidence

According to the advertiser, reliable product testing demonstrates that the Intuition Plus Renewing Moisture Razor moisturizes as consumers shave, leaving the skin noticeably softer.

i. Head to Head testing between Intuition Plus and Venus Breeze

In support of its position, the advertiser commissioned head-to-head testing between Intuition Plus and Venus Breeze. For each participant, one leg was shaved with the Intuition Plus and the other leg was shaved with the Venus Breeze. Skicon measurements were taken at pre-shave, as well as at 5, 10, and 15 minute intervals post-shave. The data were analyzed statistically to determine the change from baseline.

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According to the advertiser, its study concluded that immediately after shaving (within the first 15 minutes) a significantly greater level of skin surface moisture is associated with the Intuition Plus than with the Venus Breeze. The study confirmed that skin hydration levels following use of its Intuition Plus are significantly superior to the hydration levels provided by the Venus Breeze.

ii. Head to Head testing between Intuition Plus and Olay Ultra Moisture Moisturizing Bar

The advertiser further pointed to additional scientific evidence which it asserts demonstrates that its Intuition Plus exceeds the challenger's own standards for a moisturization claim. Proctor & Gamble³ markets its Olay body bar as "ultra moisturizing." The advertiser commissioned head-to-head testing between Intuition Plus and Olay Ultra Moisture Moisturizing Bar. For each participant, one leg was shaved with the Intuition Plus and the other leg was shaved with the Intuition Plus blade cartridge (without the surrounding moisturizing solid) using the Olay Ultra Moisture Moisturizing Bar as a shave preparation. After shaving, the second leg was re-lathered with the Olay body bar and rinsed. Skicon measurements were taken at pre-shave, as well as at 5, 10, and 15 minute intervals post-shave. The data were analyzed statistically to determine the change from baseline.

According to the advertiser, this study concluded that immediately after shaving (within the first 15 minutes) a significantly greater level of skin surface moisture is associated with the Intuition Plus than with the Intuition cartridge with the Olay Ultra Moisture Moisturizing Bar. Thus, the study confirms that the Intuition Plus hydration levels at all time points were significantly superior to the hydration levels provided by the Proctor & Gamble Olay Ultra Moisture Moisturizing bar.

iii. Clinical study to evaluate the moisturization efficacy of Intuition Plus

According to the advertiser, the hydration levels experienced when testing its Intuition Plus are attributable to the product's moisturizing solid and not water absorption. The results of a clinical study indicated that the Intuition Plus Skin Moisturizing Solid does in fact contribute a significant moisturization benefit during shaving, one that is not due to water absorption, as the challenger argued. For each participant, one leg was shaved with the Intuition Plus and the other leg was shaved with the Intuition Plus without the moisturizing solid (with shave cream). Skicon measurements were taken at pre-shave, as well as at 5, 10, and 15 minute intervals post-shave. The data were analyzed statistically to determine change from baseline.

According to the advertiser, the results of this test demonstrate that immediately after shaving (within the first 15 minutes) skin shaved with the Intuition Plus had a significantly greater level of moisture than skin shaved with the Intuition Plus *without* the moisturizing solid. The advertiser argued that the Intuition Plus Skin Moisturizing solid does in fact contribute a significant moisturization benefit during shaving, one that is not due to water absorption.

³ The challenger's parent company.

iv. Consumer use testing demonstrates that Intuition Plus leaves skin feeling soft

The advertiser also commissioned consumer use testing⁴ to evaluate consumers' perceptions of improvement in their skin feel and appearance after using the four-bladed Intuition Plus. In this consumer home-use test, participants were instructed to use only the Intuition Plus and to shave a minimum of 6 times during the 2 week period. After the 2 week period, they were called and interviewed. According to the advertiser, the results, which were statistically significant at the 99% confidence level, indicated that a highly significant majority agreed with the statements "left my skin noticeably softer," "left my skin softer," and "left my skin touchably soft."

C. EEMCO Guidance is Inapplicable

The advertiser argued that, contrary to the challenger's contention, industry standards vary and do not require a 30 minute wait time period to support a moisturization during shaving claim. The advertiser suggested that there is no need to extend the measurements any longer than 15 minutes after shaving, because such data would be irrelevant to support Schick's claim regarding the moisturization provided *during* the shave. Moreover, the advertiser asserted that the EEMCO Guidance Document is inapplicable, because the procedures outlined in the EEMCO document are *applicable to testing moisturizers and similar leave on products* which are applied to the skin, such as creams and moisturizers. In fact, the advertiser contended that the EEMCO Guidance is not the only standard used in the industry, and it is purely voluntary. The advertiser's expert noted that although the EEMCO Guidance is frequently used for measuring the benefits of topically applied moisturizers to the skin, there are a number of other industry protocols in which Skicon or similar instruments can be used to measure changes in skin surface hydration levels that fall outside of the guidelines articulated in the EEMCO Guidance document, especially with regard to 30 minute wait period.

The advertiser argued that testing based on 5, 10, and 15 minute measurements is appropriate in light of varying industry standards. The advertiser reiterated that is not making a claim for a long-lasting moisturization benefit but, rather, makes the qualified claim, distinctive in the women's razor category, that the Intuition Plus moisturizes while consumers shave. Thus, it is important to take measurements as soon as possible after shaving.

D. The Advertiser's Testing Accounts for Water Absorption

The advertiser argued that their test comparing the Intuition Plus with the moisturizing solid and without the moisturizing solid was designed to demonstrate and in fact did demonstrate that the hydration levels seen with the Intuition Plus are due solely to the skin moisturizing solid and not water or any other variable. Indeed, the advertiser contended that the same amount of water was used to shave with the Intuition Plus and the Venus razor. Further, the advertiser argued that skin surface hydration levels were significantly higher with the Intuition Plus than with the Venus Breeze and other Gillette women's razors tested. As such, Intuition Plus provided a greater moisturization benefit, regardless of the "water-rich" environment.

⁴ Submitted on a confidential basis.

II. The Advertiser's Position that its Claim that the Intuition Plus is the "Only Razor that Lathers and Moisturizes as You Shave" is Substantiated:

The advertiser argued that the Intuition Plus is the only razor that moisturizes as you shave and is also the only razor that lathers. Thus, the claim that the Intuition Plus is the only razor that lathers and moisturizes as you shave is true, accurate, and fully substantiated.

The advertiser rejected the challenger's argument that its Venus Breeze moisturizes while shaving, arguing that the testing submitted by the challenger demonstrates only that when shaving with Venus Breeze, the study participants' legs were more hydrated after shaving than before shaving. The advertiser contended that the study does not demonstrate that the Venus Breeze provides any moisturization benefit at all because it does not account for hydration levels due to water absorption.

In fact, the advertiser argued that its own reliable scientific testing shows that the Venus Breeze does not moisturize while shaving, and that its hydration levels *are* attributable to water absorption. The advertiser commissioned a clinical study to evaluate the moisturization efficacy of the Venus Breeze. For each participant, one leg was shaved with the Venus Breeze and the other leg was shaved with the Venus Breeze without gel bars (but with shave cream). Skicon measurements were taken pre-shave, as well as at 5, 10, and 15 minute intervals post-shave. The data were analyzed statistically to determine the change from baseline. Based on the results, the study concluded that immediately after shaving (within the first 15 minutes) a significantly greater level of skin surface moisture is associated with Venus Breeze with the shave gel bars *removed* (and with shave cream) than with the Venus Breeze with the shave gel bars intact. Thus, the advertiser asserted, the gel bars on the Venus Breeze do not provide any moisturization benefit and any post-shave hydration levels for the Venus Breeze in the challenger's study are attributable to water absorption, not the gel bars.

The advertiser further argued that none of the challenger's other shave products moisturize. The advertiser contended that competent and reliable scientific testing confirms that there are no significant differences in hydration levels between the Venus Divine and Venus Breeze. Indeed, the advertiser contended, the moisturization levels with the Intuition Plus are far higher than the moisturization levels with the Venus Embrace, and that the moisturization levels with the Venus Embrace are consistent with those of Venus Divine and Venus Breeze, which do not moisturize.

Moreover, the advertiser contended that, in addition to being the only razor that moisturizes while shaving, Intuition Plus is the only razor that lathers while shaving. When used on wet skin, the water combines with the Intuition Plus moisturizing solid to produce a foam lather, so that consumers experience lather while they shave. The advertiser rejected the challenger's argument that its Venus Breeze shave gel bars "provide a light lather when the razor is wet", noting that the challenger failed to provide any evidence of this light lather. The advertiser maintained that Venus Breeze does not lather in actual use, rather, coats the legs with a "gooey" substance, not at all what consumers would reasonably expect from a product that claims to "lather."

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Decision:

I. The Advertiser's Moisturization Claims:

It is the challenger's position that the advertiser's moisturization claims convey the implied message that Intuition Plus confers a long-term moisturization benefit (akin to that of a leave-on moisturizer). The advertiser, on the other hand, asserted that its moisturization claims are clearly limited to a moisturization benefit conferred *during* shaving.

It is well established that an advertiser is obligated to support all reasonable interpretations of claims made in advertising including messages it may not have intended to convey.⁵ In the absence of consumer perception evidence, NAD used its expertise to determine the express and implied messages reasonably conveyed by the challenged advertisements and packaging claims.⁶ In analyzing the messages conveyed by a particular advertisement, NAD typically reviews the totality or overall net impression created by an advertisement as a whole, not merely words or phrases standing alone, and taking into consideration both the words and the visual images.⁷ Any claim found to be implied by NAD need not be the *only* message conveyed by an advertisement, it need only be *one* of the reasonable messages conveyed by an advertisement,⁸

Employing these standards, NAD reviewed the challenged claims in the various contexts presented (television commercial, product packaging, and Internet advertising), and after thorough examination, determined that consumers could reasonably take away the implied message of a substantial or consumer-meaningful moisturization benefit beyond the "during shave" period – a message that is unsupported by the evidence in the record.

A. The Television Commercial:

The challenged commercial opens (visually) with a backdrop of a dry, cracked, arid desert floor replete with a tumbling tumbleweed, whereupon a hand holding an Intuition Plus Renewing

⁵ See, Procter & Gamble Company (Swiffer Dust & Shine with Febreze Freshness), Report #5141, *NAD/CARU Case Reports* (February 2010); Abbott Nutrition (Similac Advance EarlyShield Formula), Report #50623, *NAD/CARU Case Reports* (July 2009); Campbell Soup Company (Campbell's Select Harvest Soups), Report #4981, *NAD/CARU Case Reports* (March 2009); Verizon Services Corporation (Verizon Push-to-Talk Service), Report #4922, *NAD/CARU Case Reports* (October 2008); Johnson & Johnson Vision Care, Inc. (Acuvue Advance for Astigmatism), Report #4772, *NAD/CARU Case Reports* (December 2007).

⁶ Abbott Nutrition (Similac Advance EarlyShield Formula), Report #50623, *NAD/CARU Case Reports* (July 2009); Johnson & Johnson Vision Care, Inc. (Acuvue Advance for Astigmatism), Report #4772, *NAD/CARU Case Reports* (December 2007); The Valvoline Company (Zerex G-05 Extended Life Antifreeze), Report #4375 (August 2005); McNeil, PPC, Inc. (Tylenol Arthritis Pain), Report #4247, *NAD/CARU Case Reports* (November 2004).

⁷ Procter & Gamble Company (Swiffer Dust & Shine with Febreze Freshness), Report #5141, *NAD/CARU Case Reports* (February 2010); Campbell Soup Company (Campbell's Select Harvest Soups), Report #4981, *NAD/CARU Case Reports* (March 2009); Verizon Services Corporation (Verizon Push-to-Talk Service), Report #4922, *NAD/CARU Case Reports* (October 2008); Johnson & Johnson Vision Care, Inc. (Acuvue Advance for Astigmatism), Report #4772, *NAD/CARU Case Reports* (December 2007).

⁸ See, Lenovo (United States), Inc. (Personal Computers) Report #4820, *NAD/CARU Case Reports* (March 2008); Snapple Beverage Corporation (Snapple-a-Day Meal Replacement), Report # 4132, *NAD/CARU Case Reports* (January 2004)

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Moisture Razor makes several passes over the screen revealing a lush green oasis with accompanying waterfall. The voice over states, “Revitalize your skin with the Schick Intuition Plus.” As these words are spoken, a lotion is depicted “pouring” around the razor to form the skin conditioning solid that surrounds the blades of the Schick Intuition Plus. “It has a moisture rich conditioner, now with natural pomegranate, surrounding four blades for a closer shave.”⁹ The visual changes to a close up of a woman’s leg, wet with water, being shaved with the Intuition Plus, as the voice over states, “It’s the effortless way to lather, shave and moisturize in one easy step.” With the woman’s leg now shaved, a hand is seen caressing the skin. “The Schick Intuition Plus, now in pomegranate. Free your skin.”

Specifically, NAD was concerned with the visuals of a cracked dry desert morphing into an oasis (and waterfall) upon use of the Intuition Plus, coupled with the lotion-to-solid imagery and the unqualified claim (emphasis added) “It’s the effortless way to lather, shave *and moisturize* in one easy step.” NAD noted that the advertiser is not claiming here that women can lather and moisturize *for an easy or smoother shave*. Rather, the advertiser claims that consumers can “lather [then] shave and moisturize” – this last act being something that women typically do post-shaving, using leave-on lotions – “in one easy step.” NAD further noted that the commercial offered no limiting language that might lead consumers to reasonably conclude that the moisturizing benefit was limited to the addition of moisture solely during the shaving process. NAD concluded that these factors combined reasonably convey the message that the advertiser’s product provides a significant, consumer-meaningful post-shave moisturizing benefit – a message that is unsupported by the evidence in the record.

The advertiser’s testing consisted of measurements taken only at the 5, 10 and 15 minute mark and no measurements at the 30-minute mark (and points thereafter), as provided for in the EEMCO Guidelines for leave-on moisturizers. In the absence of any measurements taken using the latter guidelines – which NAD deemed to be the more consumer relevant time interval given the significant moisturization message reasonably conveyed by the challenged commercial, the implied message of consumer meaningful post-shave moisturization is unsupported. As such, NAD recommended that the challenged commercial be discontinued.

NAD further questioned whether the evidence in the record provided a reasonable basis for the advertiser’s intended claim of a moisturization benefit *during shaving*.

As noted, in the advertiser’s testing, Skicon measurements were taken at 5, 10, and 15 minutes *after* shaving and data was analyzed to determine changes from baseline. According to this data, hydration levels experienced immediately after shaving with the Intuition Plus are attributable to the product’s moisturizing solid and not water absorption. As such, it appeared to NAD that the Intuition Plus Skin Moisturizing solid does in fact contribute a significant moisturization benefit during shaving, one that is not due to water absorption. Thus, to the extent that the advertiser wishes to promote a moisturization message *strictly limited* to “during shaving,” NAD determined that such a claim was supported by a reasonable basis. Notably, even the challenger’s testing demonstrated that at 5 minutes post-shave, Corneometer measurements for

⁹ Simultaneously, a super appears “vs original Intuition Plus.”

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Intuition Plus were significantly elevated as compared to baseline and at ten minutes, post-shave readings were still slightly higher than pre-shave baseline readings. NAD concluded that this data would appear to bolster the reasonable basis found by the advertiser's evidence to support a *during shave* moisturization benefit. At the same time, NAD noted that, at the fifteen minute mark the Corneometer readings were near or at baseline levels (and were no longer statistically significant at the 95% confidence level as compared to pre-shave baseline),

NAD was not persuaded by the challenger's contention that the EEMCO guidelines recommend taking measurements at 30 minutes (and points thereafter) to allow for the "evaporation phase" of 15 minutes post-shave. As noted, EEMCO Guidelines are suited for measurements for leave-on or traditional moisturizers. As such, these Guidelines appear to be inapplicable for claims made for a *during shave* moisture-conferring benefit.

Therefore, NAD recommended that, in the future, the advertiser take care to specifically, and conspicuously, limit its moisturization claim to a "during shave" time period and avoid the implication that the moisturization provided is of a longer term than the evidence supports.

With respect to that portion of the advertiser's claim that its Intuition Plus Renewing Moisture "leaves skin *noticeably softer*" NAD determined that this claim was adequately supported by the advertiser's consumer perception testing.¹⁰ However, NAD observed that while the participants were from a diverse geographic location and of sufficient number, all pertinent questions asked of the respondents as to their experience with the Intuition Plus Renewing Moisture Razor (including but not limited to "leaves your skin noticeably softer"), were asked in comparison to the respondents' "usual" razor" which, in the fourteen days prior to this test, was the prior version of the Intuition Plus. As such, with respect to that portion of the advertiser's claim that its Intuition Plus Renewing Moisture "leaves skin *noticeably softer*", given the overall unqualified comparative nature of the challenged advertisements, NAD recommended that this claim be modified to clearly and conspicuously disclose that the comparison being made as to this product attribute is to the previous generation of the product.

As pertains to the advertiser's claim of exclusivity (i.e., being the *only* razor to provide a moisturization benefit *during shaving*) the challenger asserted that, with respect to the results of the advertiser's testing, the advertiser attributes the higher Skicon readings for its Intuition Plus to its moisturizing solid, but attributes the higher Skicon readings for Venus Breeze to the presence of water and that the advertiser cannot have it both ways. However, NAD observed, the challenger conflates the results of two sets of testing. The first set of demonstrated only the *relative* positions (data) concerning hydration during shaving but did not, however, show that any hydration seen was directly attributable to the actual respective razor units (i.e., the Intuition razor and its surrounding solid or the Venus product and surrounding gel bars). To this end, NAD observed that the advertiser's testing of the parties' products – both with their respective surrounding solid and gel bar and without (using shave cream), demonstrated that Intuition Plus (with the solid) provided statistically significant higher moisturization levels than the Intuition unit without the surrounding solid. Indeed, this testing showed that the Venus product *without*

¹⁰ Submitted on a confidential basis.

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the gel bars, in fact had higher hydration levels than with the gel bars demonstrating that whatever hydration levels were found with the Venus Breeze, it is not attributable to the presence of the gel bars.

As such, in sum, NAD concluded that based on the evidence in the record provided a reasonable basis for the advertiser's claim that its Intuition Plus Renewing Moisture with its surrounding solid, is the only razor to provide a moisturization benefit. However, NAD reiterated that any such moisturization message should be expressly and conspicuously limited to the "during shave" time period and avoid the implication (by word or imagery) that the moisturization provides a long term benefit

B. Product Packaging:

The front panel of the product packaging contains the claim, "lathers, shaves and moisturizes in one easy step." On the top left of the front panel appear the words, "Enhanced Moisturizing Solid." The rear panel of the product packaging contains the claim, "The only razor that lathers and moisturizes, as you shave. Leaving your skin noticeably softer." Below this, appear the words, "No need for shave gel, soap or bodywash." The backdrop on both the front and rear panel is that of water droplets on a pale aqua background.

As was the case with the television commercial, NAD observed that the claims on the product packaging include no qualifying or limiting language from which consumers could reasonably understand that the message conveyed refers solely to the time period "during shaving."

To the extent that the advertiser argued that the words, "in one easy step" serve as adequate qualification of its moisturization claim, NAD did not agree. The advertiser claims on its packaging that product users can "lather [then] shave and moisturize" – something that women typically do in two-steps, i.e., shaving and then using leave-on lotions, post-shaving – "in one easy step. As worded, NAD concluded that this claim reasonably conveys the message that the consumer can both shave ("lather, shave") and moisturize all at the same time, obviating the need for a post-shave moisturizer, a message again not supported by the evidence in the record.

As for the rear panel of the product packaging, NAD was not persuaded by the advertiser's contention that the phrase "as you shave" in its claim, "[t]he only razor that lathers & moisturizes as you shave" sufficiently limited the claim to the time period during shaving. Rather, NAD determined that consumers could reasonably interpret this claim to mean that consumers can both shave and then moisturize their skin at the same time – particularly in light of the language immediately following, "leaving your skin noticeably softer."¹¹ As such, NAD recommended that the product packaging be modified to remove the claim, "lathers, shaves & moisturizes in one easy step" and "the only razor that lathers & moisturizes as you shave." However, to the extent that the advertiser wishes to promote the fact that its product confers a "during shave" moisturization benefit, NAD recommended that the advertiser clearly and expressly limit such a

¹¹ NAD did not believe that the language "No need for shave gel, soap or body wash" (with the omission of "lotion" or "post-shave moisturizer" language) limited the reasonable message conveyed.

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claim to the “during shave” period, and discontinue the exclusivity claim that it is the *only* razor to provide a “during shave” moisturization benefit.

C. The Web Site:

The advertiser’s web site states that, “[t]here are two simple steps to smoother skin, and Schick Intuition Plus helps you accomplish both.” The web site then continues:

Quite simply, the combination of exfoliating skin – removing dry, dead skin layers, then moisturizing and adding important nutrients is the best way to achieve smooth, healthy-looking skin.

The 4 blades of Schick Intuition Plus exfoliate as you shave, preparing legs to maximize the impact of moisturizers.

The moisturizing ingredients found in Schick Intuition Plus formulas provide a simple way to lather, shave and add extra moisture immediately after the exfoliation process.

As was the case with the advertiser’s commercial and product packaging, NAD noted that the advertiser’s web site recites two steps “to smoother skin”¹²: exfoliating *then moisturizing*. The advertiser’s site then states that its blades exfoliate preparing legs for the impact of the *moisturizers* – and how the moisturizing ingredients provide extra moisture following the exfoliation process. As worded and in the context presented, NAD concluded that consumers could reasonably interpret these claims to mean that the last step of the shaving process (i.e., using a moisturizer post-shave) is obviated by use of the Intuition Plus Renewing Moisture Razor or, in other words, that the razor provides a significant, consumer-meaningful post-shave moisturization benefit. Given the lack of support for this message, NAD recommended that these claims be discontinued. However, again, to the extent that the advertiser wishes to make a “during shave” moisturization claim, NAD recommended that in future advertising, the advertiser expressly and conspicuously limit its moisturization claim to a “during shave” time period and avoid the implication that the moisturization provides a long term benefit.

II. “The Only Razor that Lathers and Moisturizes as You Shave” Claim:

Having previously determined that the evidence in the record, the advertiser’s claim that its Intuition Plus Renewing Moisture with its surrounding solid, is the only razor to provide a moisturization benefit *during the shave*, NAD turned its attention to the claim that the Intuition Plus Renewing Moisture razor is the (emphasis added) “only razor *that lathers* and moisturizes as you shave.” After careful review of the evidence in the record, NAD concluded that the advertiser’s evidence provided a reasonable basis for this claim. However, to the extent that the advertiser wishes to tout its moisturization benefit (i.e., in conjunction with its “lather” benefit), NAD again cautioned that any such claim be limited to the “during shaving” time period.

¹² i.e., not “to a smoother shave.”

Conclusion:

NAD determined that the claim, “lathers, shaves, and moisturizes in one easy step” in the context in which it appears on the advertiser’s product packaging, web site and challenged commercial, reasonably conveys a message of a consumer-meaningful post-shave moisturization benefit, a message that was unsupported by the evidence. As such, NAD recommended that the product packaging be modified to remove this claim and that the challenged commercial be discontinued. At the same time, however, NAD concluded that the advertiser had provided a reasonable basis for its “during shave” moisturization message, but recommended that, in future advertising, the advertiser expressly and conspicuously limit its moisturization claim to a “during shave” time period and avoid the implication that the moisturization provides a long term benefit. With this in mind, NAD also concluded that the evidence in the record provided a reasonable basis for the advertiser’s claim that the Intuition Plus Renewing Moisture is “the only razor that lathers and moisturizes as you shave.”

Lastly, with respect to that portion of the advertiser’s claim that its Intuition Plus Renewing Moisture “leaves skin *noticeably softer*”, NAD recommended that this claim be modified to clearly and conspicuously disclose that the comparison being made is to the previous generation of the Intuition Plus.

Advertiser’s Statement:

Energizer is pleased that NAD determined that we provided a reasonable basis for the claims that our Schick Intuition Plus Renewing Moisture razor provides a moisturization benefit during shaving, and is “the only razor that lathers and moisturizes” during shaving. Energizer is further pleased that the claim that the Schick Intuition Plus razor “leaves skin noticeably softer” was adequately supported by consumer use testing. Energizer disagrees that “as you shave” and “in one easy step” in the context used are phrases that convey a post-shave moisturization benefit similar to a leave-on lotion. We also respectfully disagree that the challenged television commercial conveys a message of a post-shave moisturization benefit. However, in the spirit of cooperation with the self-regulatory system, we will take NAD’s recommendations into account in future advertising. We thank NAD for its thoughtful consideration of this matter. (**#5209 MSZ, closed 08/26/2010**)