



For Immediate Release

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In Two Fast-Track SWIFT Cases, NAD Recommends Advertiser Claims be Discontinued in One, and Advertiser Voluntarily Discontinues Claims in the Other

New York, NY – Nov. 10, 2021 – The National Advertising Division (NAD) of BBB National Programs closed two Fast-Track SWIFT cases in October.

- Stokely-Van Camp, manufacturer of Gatorade flavored sports drinks, challenged BA Sports Nutrition’s social media posts about the comparative taste of its BodyArmor flavored sports drinks vs. Gatorade’s.
- The Procter & Gamble Company (P&G), manufacturer of Old Spice brand deodorant and anti-perspirant products, challenged Art of Sport Group, Inc.’s superiority and disparagement claims in its Instagram videos featuring Old Spice and Art of Sport deodorant canisters “competing” in hurdle and vault competitions.

Fast-Track SWIFT is an expedited NAD process designed for single-issue advertising cases.

Stokely-Van Camp, Inc. v. BA Sports Nutrition, LLC

Stokely-Van Camp brought the challenge to four of BA Sports Nutrition’s express claims in social media posts regarding a blind “taste test,” appearing on the social media accounts of BodyArmor endorser Baker Mayfield (Cleveland Browns quarterback and former Heisman Trophy winner) and was shared on BodyArmor’s social media accounts. NAD recommended that the advertiser discontinue the challenged claims.

The four express claims in the Baker Mayfield taste test video included: (1) Gatorade is “awful”; (2) having to drink Gatorade is “not cool”; (3) Gatorade is nauseating (as depicted via nauseated emoji); and (4) people spit Gatorade out after drinking it.

NAD determined that these claims were appropriate for Fast-Track SWIFT because the issue was limited to the advertiser’s alleged disparagement of Gatorade and whether any unsupported messages about Gatorade are reasonably conveyed through express statements and images in the video.

In the “taste test,” Mr. Mayfield samples three flavors of BodyArmor, which he is familiar with, and proudly identifies them. After being handed a fourth bottle, which unbeknownst to him contains Gatorade, Mr. Mayfield sips it and immediately exclaims, “Yo, that is not cool. That’s awful,” while removing his blindfold, spitting out the Gatorade, and shaking his head. As this occurs, the Nauseated Face Emoji and the Face with Tears of Joy Emoji appear together prominently on the screen.

NAD noted that emojis frequently substitute for the written word in contemporary communications and some emojis more clearly communicate feelings or emotions than others. The Nauseated Face Emoji, for example, communicates a clear message that something is gross. The Face with Tears of Joy Emoji is used as a reaction to a joke that one enjoys. NAD concluded that the synchronized appearance of the Nauseated Face Emoji with Mr. Mayfield’s reaction conveys a negative message about Gatorade. When the green Nauseated Face Emoji is paired with the Face with Tears of Joy Emoji,⁴⁵ the use of emojis in this context expresses Mr.

Mayfield's reaction to a foul, nauseating beverage, after being pranked by his taste test partner.

NAD determined that the advertising makes an expressly disparaging statement that Gatorade is "awful," nauseating, or undrinkable. Because the advertiser did not have any support for the messages about Gatorade, NAD recommended that the advertiser discontinue the express claims made in the video.

In its advertiser's statement, BA Sports Nutrition stated that although it "vehemently disagrees with the NAD's decision, because the post is two months old, BODYARMOR will remove the post from its social media pages."

The Procter & Gamble Company v. Art of Sport Group, Inc.

The challenged claims appeared in video advertisements on the Art of Sport's Instagram page and included:

- "We'd call 'em competition, but it's lonely on this podium."
- ". . . don't flop with ✓✓✓✓. "

Although mooted by the advertiser's permanent discontinuance of the challenged claims, this case was appropriate for Fast-Track SWIFT disposition because the issue of whether the advertiser's superiority and disparagement claims about Old Spice products were supported was not likely to require the review of complex evidence or substantiation.

In response to P&G's SWIFT challenge, the advertiser informed NAD that it had voluntarily taken down both challenged advertisements and affirmed that it would permanently discontinue their use going forward. Because the advertiser did not permanently discontinue the claims until the challenge had been filed, NAD did not review the claims on their merits, but maintained jurisdiction so that it may review the matter for compliance.

Learn more about the [NAD Fast-Track SWIFT](#) challenge process and how to file a challenge. All BBB National Programs case decision summaries can be found in the [case decision library](#). For the full text of NAD, NARB, and CARU decisions, subscribe to the [online archive](#).

About BBB National Programs: BBB National Programs is where businesses turn to enhance consumer trust and consumers are heard. The non-profit organization creates a fairer playing field for businesses and a better experience for consumers through the development and delivery of effective third-party accountability and dispute resolution programs. Embracing its role as an independent organization since the restructuring of the Council of Better Business Bureaus in June 2019, BBB National Programs today oversees more than a dozen leading national industry self-regulation programs, and continues to evolve its work and grow its impact by providing business guidance and fostering best practices in arenas such as advertising, child-directed marketing, and privacy. To learn more, visit bbbprograms.org.

About the National Advertising Division: The National Advertising Division (NAD), a division of BBB National Programs, provides independent self-regulation and dispute resolution services, guiding the truthfulness of advertising across the U.S. NAD reviews national advertising in all media and its decisions set consistent standards for advertising truth and accuracy, delivering meaningful protection to consumers, and leveling the playing field for business.