



For Immediate Release

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Genexa Appeals NAD Recommendation to Discontinue or Modify Pediatrician Preference and Ingredient Claims for OTC Kids' Pain & Fever Medicine

New York, NY – Nov. 14, 2022 – The National Advertising Division (NAD) of BBB National Programs recommended that Genexa Inc. discontinue certain pediatrician preference claims and ingredient claims for its over the counter (OTC) Kids' Pain & Fever medicine. Genexa will appeal NAD's decision.

The challenged claims appeared on the advertiser's website, in social media posts, on physical point-of-sale displays, and in digital video advertising.

The claims were challenged by Johnson & Johnson Consumer, Inc., McNeil Healthcare Division, manufacturer of competing OTC pain and fever medications for children. Both parties' products contain the active ingredient acetaminophen but differ in the formulation of their inactive ingredients.

At issue for NAD was whether the challenged pediatrician preference claims were supported by a survey of pediatricians (the FRC Survey) and whether the challenged ingredient claims, which contrast the advertiser's product with other children's OTC medications including formulations of Johnson & Johnson's Children's TYLENOL Pain + Fever Oral Suspension, were falsely disparaging.

Pediatrician Preference Claims

Johnson & Johnson challenged the following pediatrician preference claims:

- "Pediatricians prefer Genexa's Kids' Pain & Fever over Children's Tylenol Pain + Fever liquid products for their own children based upon comparing the ingredients"; and
- "The doctors have spoken."

Stepping into the shoes of a reasonable consumer, NAD found that one message conveyed by the challenged claims is that the pediatricians prefer the advertiser's product and not that such preference is limited to "ingredients." NAD also found that another reasonable consumer message conveyed is that pediatricians recommend the advertiser's product in their own

practices and use it to treat their own children. NAD determined that the advertiser's FRC survey was not a good fit for the challenged claims.

NAD recommended that the claims be discontinued or modified to make clear that the surveyed pediatricians expressed a preference only as to "ingredients." NAD further recommended that the advertiser avoid stating or implying that pediatricians prefer or use the advertiser's product over the challenger's product in their practices or for their own children.

Ingredient Claims

NAD has recognized that there is a distinction between claims that underscore a product's claimed benefit versus claims that state or reasonably imply that other products are unsafe or pose potential risks or dangers.

NAD found that the following challenged claims convey the message to a reasonable consumer that there are ingredients in competitors' products, including Johnson & Johnson's, that are dangerous and unsafe by indicating that the ingredient is in or made from products that would be harmful if ingested.

Because there was no evidence in the record to support claims that the FDA-approved non-active ingredients in competitors' products, including Children's TYLENOL, are harmful or unhealthy, NAD recommended that these claims be discontinued.

NAD also recommended that the advertiser discontinue the "MADE WITH REAL INGREDIENTS" claim in the context presented in the now discontinued video advertisement and avoid conveying the message that competing products with different inactive ingredients are generally unsafe, harmful, or dangerous. NAD noted that nothing in its decision prevents the advertiser from highlighting the "real ingredients" in its product provided, however, that the advertising does not otherwise convey the message that competing products contain inactive ingredients that are generally unsafe, harmful, or dangerous.

NAD determined that several remaining ingredient claims did not constitute mere puffery, but instead compared Genexa's products to competitor's products in a measurable way such that substantiation for the claims is required.

Therefore, NAD recommended that the advertiser discontinue the following claims in the context in which they appear in the challenged advertising:

- "When we looked around the medicine aisle, we found something that made us sick."
- "Your kid's pain medicine shouldn't give you a headache."
- "Things that shouldn't exist, with a list of items like "showers that make you dirty," "food that makes you hungry," "all artificial dyes in medicine," and "parabens in medicine."

Finally, the advertiser informed NAD that it had previously discontinued the use of four additional claims "EWWW," "SERIOUSLY?!", "JUST WOW" "Ditch the dirty," and "#pediatricianapproved" prior to the date of the challenge. During the challenge, the advertiser advised NAD and the Challenger that it permanently discontinued these claims. Therefore, NAD did not review these claims on the merits.

In its advertiser statement, Genexa stated that it will appeal NAD's decision. The advertiser stated that although it is "pleased that NAD found that the FRC Survey supported an ingredient-based preference claim (e.g. 'Pediatricians prefer the ingredients in Genexa's Kids'

Pain & Fever over Children’s Tylenol Pain + Fever liquid products for their own children’)” and that “nothing in NAD’s decision prevents Genexa from highlighting the ‘real ingredients’ in its product,” it “fundamentally disagrees with the balance of NAD’s decision,” including the recommendations to modify or discontinue the challenged claims.

Appeals of NAD decisions are made to BBB National Programs’ National Advertising Review Board (NARB), the appellate-level truth-in-advertising body of BBB National Programs.

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About the National Advertising Division: The National Advertising Division (NAD) 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.