



National Programs

National Advertising Review Board®

NARB PANEL #301 – April 13, 2022

Appeal of the NAD Final Decision #7029 Regarding Claims for Merck Animal Health USA, BRAVECTO®

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REPORT OF NARB PANEL 301

Decision Issued: April 13, 2022

Appeal of the NAD Final Decision #7029 Regarding Claims for Merck Animal Health USA, BRAVECTO®

Merck Animal Health (“Merck”) appeals a decision of the National Advertising Division (“NAD”) dated January 20, 2022, Case # 7029. The challenger is Boehringer Ingelheim Animal Health USA Inc. (“BI”). The advertiser and challenger sell competing flea and tick preventive oral medication for dogs, Bravecto and NexGard, respectively.

A. Background

At issue in this appeal is one 30-second television advertisement that compares Merck’s Bravecto brand flea preventative oral prescription medication to BI’s NexGard brand flea preventative oral prescription medication.

The ad features the actor John Michael Higgins, who starred in the movie “Best in Show.” Higgins is depicted overseeing two dogs on each side of a fence. An image of NexGard packaging appears above the dog on the left-hand side of the screen, indicating that the dog was given NexGard. The dog on the right is similarly shown to have been given Bravecto. “Week 1” appears on the top left of the screen inside of a large circle. Higgins states “Welcome. It’s time to see which chew is best in show for long-lasting flea and tick protection.” He follows with “we may be here for weeks, even months,” while winking at the camera. The next frame shows “Week 5” on the top left of the screen inside of a large white circle indicating the passage of time. The dog on the left that had been given NexGard is shown scratching for four to five seconds, suggesting that it has been bitten by fleas, while Higgins exclaims, “Holy smokes, a rejection in protection at week 5!” The commercial continues with Higgins saying “But Bravecto just won’t quit.” The circle on the upper left of the screen is updated to “Week 8” to illustrate the further passage of time. Higgins then states, “Let’s hear from our veterinarian expert.” An actor portraying a veterinarian appears and states, “Bravecto is our clear winner. 12 weeks of powerful protection, nearly 3 times longer than any other chew.” Higgins states, “Now that’s what I’m talking about! Bravo, Bravecto, Bravo,” while the Bravecto-treated dog sits on top of a winner’s podium. The veterinarian stands to the side holding a trophy labeled “#1 Long Lasting Chew.”

The parties agree that the Bravecto product’s approved FDA dose is one chew every twelve weeks, while the NexGard product’s approved FDA dose is one chew every month. The parties do not dispute that both products offer similar efficacy for preventing fleas when used as directed. While the parties dispute the messages conveyed by the challenged advertising, neither party offered consumer survey evidence supporting its interpretation.

In its Decision, NAD recommended that Merck discontinue its “Best in Show” 30-second television commercial. NAD found that one reasonable interpretation of the commercial is that Bravecto is more effective than NexGard at protecting dogs from fleas, which is an unsupported claim.

NAD also advised the advertiser “to take steps to ensure that when making an apples-to-oranges comparison between Bravecto and NexGard, that the material dosing difference between the compared products is sufficiently disclosed.” NAD Decision at 9.

B. Discussion

In its presentation to the panel, Merck argues that any reasonable consumer would understand that Merck’s Bravecto commercial communicates *only* that one dose of Bravecto lasts nearly 3x longer for flea protection than one dose of NexGard. Merck argues that its depiction of Bravecto providing adequate flea protection at weeks 5, 8 and 12, while NexGard does not, is a truthful and non-misleading depiction of FDA’s determination of each product’s respective duration of action for a single dose. Merck argues that the commercial does not create a misleading “apples to oranges” message that its longer lasting performance in preventing fleas is based on superior efficacy rather than its longer single dose duration of action.¹

The majority of the panel finds that Merck’s commercial in its current form is not sufficiently clear in conveying that Bravecto’s longer lasting performance in preventing fleas as compared to BI’s NexGard is due solely to the fact that Bravecto is a chew designed to last twelve weeks rather than one month, which is the design of the NexGard chew.² The advertisement never states or provides a visual cue (e.g., showing the number of doses needed) that one product is designed for monthly use and the other is designed for use every 12 weeks.

The majority of the panel finds that the lack of clarity results in a reasonable interpretation by consumers that the NexGard single dose product failed to continue working through the twelve-week time period portrayed in the commercial because it is less efficacious. The image of the NexGard dog scratching for four to five seconds depicting that it has been bitten by fleas, while the voiceover states, “Holy smokes, a rejection in protection at week 5!,” conveys a strong message that a NexGard chew leaves a dog completely unprotected at the start of week five, which is unsupported by any data submitted by the advertiser, who bears responsibility for providing a

¹ The commercial includes a print dosing disclosure that NAD found inadequate. Because Merck’s position in its presentation to the panel is that the disclosure is not intended to, nor necessary to, clarify the duration-of-action message, the panel disregarded the disclosure in its claims analysis.

² One panel member agrees with the advertiser that the challenged advertisement reasonably conveys *only* a message that one Bravecto chew lasts longer than one NexGard chew in preventing fleas.

reasonable basis for its claim.³ This unsupported message, combined with the voiceover stating “But Bravecto just won’t quit,” and the image of the NexGard dog appearing to cover its head in shame at the end of twelve weeks while the Bravecto dog receives its #1 long lasting chew trophy, conveys an implied misleading and unsupported message that a NexGard chew fails to protect against fleas for twelve weeks because of a lack of efficacy, rather than because the product’s protection has simply run its course.

Although some consumers may understand that the NexGard chew fails the twelve-week test *only* because it is designed to last a month, a majority of the panel concludes that reasonable consumers would interpret the portrayal of the products competing in a contest to determine which product works best over a twelve-week cycle as showing that Bravecto delivers superior flea protection based on efficacy, a claim that both parties agree is not supported. There is nothing in the record to indicate that NexGard when used as directed with monthly dosing is less effective than Bravecto at preventing fleas and ticks over a twelve-week period.

C. Conclusion

The panel recommends that Merck discontinue its “Best in Show” advertisement. The panel also finds that that nothing in the NAD decision prevents Merck from advertising a truthful message that a single dose of Bravecto is designed to last 12 weeks compared to NexGard’s one-month dosing design, and any benefit that may come from that, such as convenience to pet owners.

The panel thanks Merck and BI for participating in industry self-regulation in the interests of promoting truth in advertising.

D. Advertiser’s Statement

Merck Animal Health will comply with the NARB’s decision. Merck Animal Health thanks the panel for its attention to this matter and acknowledging Merck Animal Health’s right to share that a dose of Bravecto lasts 12 weeks compared to NexGard’s one-month dosing design. Merck Animal Health also appreciates the Panel reiterating Merck’s right to share any benefit that comes from Bravecto’s longer duration of action, including, convenience to pet owners.

Merck Animal Health respectfully disagrees with the majority’s ruling that the Bravecto 30 second “Best in Show” commercial reasonably conveys a message other than that one dose of Bravecto has a longer duration of action than a dose of NexGard. Nonetheless, Merck Animal Health will consider the NARB’s recommendations in future advertising.

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³ Data submitted by BI shows that after a single dose, protection continues at least until the 35th day of treatment.