



# National Programs

National Advertising Review Board®

## NARB PANEL #303 – August 18, 2022

### Appeal of NAD’s Final Decision #6977 Regarding Claims for The Procter & Gamble Company, Febreze Air Fresheners

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## REPORT OF NARB PANEL 303

Decision Issued: August 18, 2022

### Appeal of NAD’s Final Decision #6977 Regarding Claims for The Procter & Gamble Company, Febreze Air Fresheners

The advertiser, The Procter & Gamble Company (“P&G”), is the manufacturer of a leading line of home fragrance products sold under the brand Febreze. The challenger is S.C. Johnson & Son, Inc. (“SCJ”), which sells a competing line of home fragrance products under SCJ’s Glade brand. P&G reports that its Febreze brand is the market leader.

SCJ filed a challenge to Febreze’s odor-elimination advertising. In a decision dated May 11, 2022 (Case # 6977), the National Advertising Division (“NAD”) upheld SCJ’s challenge and recommended that P&G discontinue 19 express and two allegedly implied Febreze odor-elimination claims. P&G has filed an appeal to a panel of the National Advertising Review Board (“NARB”). There is no cross-appeal.<sup>1</sup>

#### A. Background

At the time of the challenge, Febreze products were available in eight product forms (referred to by P&G as “pillars”): (i) air; (ii) candle; (iii) car; (iv) clothing; (v) fabric; (vi) plug; (vii) small spaces; and (viii) wax melts. In its initial response, P&G advised NAD that P&G was in the process of phasing out its clothing pillar, and, accordingly, no issues concerning claims for this pillar are before the NARB panel.

The Febreze line of products, launched more than 20 years ago, is based on P&G’s proprietary “OdorClear” technology. That term encompasses four separate odor-blocking technologies: (i) Odor Trappers; (ii) Odor Converters; (iii) Odor Neutralizers; and (iv) Odor Magnets. One or more of these technologies is utilized in each of the Febreze products.

Certain features of P&G’s OdorClear technology are covered by patents. In addition, P&G submitted scientific literature and expert testimony explaining the performance of its OdorClear technology. Each OdorClear technology is designed to address odor at the molecular level, meaning physically or chemically changing or neutralizing malodor compounds or molecules at the source of the odor so that they no longer produce malodor. See NAD Decision at 6. According to P&G, these technologies allow Febreze products to “eliminate” malodors rather than merely mask them with a pleasing fragrance. See id. at 6-7. At the same time, with apparently one

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<sup>1</sup> The dispute at NAD was classified as “Complex” under NAD’s applicable rules of procedure. This is the second time an NARB Panel has considered an appeal from an NAD decision in a Complex proceeding.

exception (see NAD Decision 8, n. 7), all Febreze products also contain fragrances.

## **B. Overview of Disputed Issues**

SCJ challenged a total of 20 express and two implied odor-elimination claims. See NAD Decision at 1-3. One of these claims promoted the Febreze clothing pillar which, as noted, P&G is phasing out.<sup>2</sup> NAD recommended that P&G discontinue all of the other challenged claims.

A principal disputed issue concerns what message or messages are being communicated to consumers by the Febreze odor-elimination claims. Of the 19 express claims that NAD recommended be discontinued, 17 contain the term “eliminate” or a form of that word, and the other two use comparable terminology. As neither party submitted evidence of consumer interpretation, NAD relied on its own expertise to determine the messages reasonably conveyed by the odor-elimination message. See NAD Decision at 4.

P&G contends that its references to eliminating malodor convey to reasonable consumers a mode of action – how its Febreze air fresheners work. It further asserts that proper testing support for an eliminating-malodor claim is evidence that the product reduces malodor to a point where the offensive odor is no longer perceptible to the average person, *i.e.*, eliminated at the olfactory level. P&G acknowledges that its testing does not separate out the contribution of malodor masking to overall Febreze product efficacy.

NAD concluded that all of the challenged claims conveyed that Febreze products rendered malodor undetectable at the olfactory level, and that a subset also conveyed the message that Febreze product performance is based on neutralizing or removing, *i.e.*, eliminating, malodor at the molecular level. NAD gave several examples of advertising claims that, in its view, conveyed the molecular-level message. See NAD Decision at 5. These included, for example, commercials for Febreze that featured the animated imagery of odor molecules being destroyed by the Febreze product. *Id.*

NAD concluded that P&G’s testing could not support its molecular-level elimination claims because the testing only sought to assess the perception of odor, and did not try to quantify neutralization of the causes of odor at the molecular level. See NAD Decision at 8 (evidence limited to sensory testing “not a good fit for implied claims that Febreze eliminates the source of odor at the molecular level”).

P&G argues that it does not need product-performance testing to support its mode-of-action

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<sup>2</sup> NAD’s schedule of challenged express claims (NAD Decision at 1-2) lists a total of 21 claims. However, the one that begins with “Did you know that your nose gets used to the odors in your home?” appears twice.

advertising references. It is P&G's position that its technical evidence (in patents, scientific literature, and expert reports) documenting or explaining the OdorClear technology mode-of-action provides sufficient support for the advertising mode-of-action references. P&G also argues that NAD held it to an unreasonably high standard of having to show that use of a Febreze product "completely destroys" odorant molecules.

In making its recommendations to discontinue the challenged odor-elimination claims, NAD noted that Febreze product efficacy was not at issue:

Nothing in this decision precludes the Advertiser from making truthful and non-misleading claims that Febreze products reduce the perception of malodor or that Febreze products physically and chemically affect malodor at the molecule level, including claims that the products work instantaneously or continuously.

NAD Decision at 17. Consistent with NAD's observations concerning the scope of its recommendations, SCJ acknowledged in its opposition to P&G's appeal that SCJ "did not challenge claims that Febreze products 'work' or that they reduce the perception of malodor."

### **C. P&G's Argument Based on the Absence of Customer Complaints**

One of P&G's arguments is that NAD erred in ignoring P&G's contention that its brand records reflect a complete absence of any material level of consumer complaints about P&G's claim that Febreze products "eliminate" malodor, notwithstanding use of the challenged claims for over 20 years while sales of the brand continued to expand. In support of this position, P&G relies on a one-page summary of data submitted by one of its experts labelled "Summary of Febreze Did Not Remove/Eliminate Odor Complaints." There are no details in the record concerning how this data was collected, or what feedback P&G has received over the years about its Febreze brand.

In its Brief to this panel, P&G argued that on the basis of the record of the absence of consumer complaints alone, NAD's recommendations in the Decision should be set aside. However, at the hearing, P&G clarified that it was only offering the consumer complaint data as evidence that corroborated its testing results.

SCJ argues that P&G's no-consumer-complaints position is meritless because it is not based on testing, but rather is anecdotal in nature. SCJ argues that this type of evidence has never been accepted by NAD as claim support for product efficacy claims. SCJ further argues that the complaint data cannot be credited because P&G did not provide any information concerning how the data was compiled.

The panel concludes that an alleged absence of complaints from consumers protesting the "eliminates" advertising claims is not evidence that qualifies as support for the product efficacy

claims at issue here. The panel agrees with the challenger that, in general, consumer feedback of this type is not a substitute for product testing, and the panel does not see any reason to depart from that principle here.

#### **D. P&G's DFC Testing**

##### **1. Overview of Testing Issues**

In support of its claims, P&G relies on extensive “difference from control” (or “DFC”) testing on products in each of its Febreze pillars. P&G contends that this testing provides proper support for the olfactory elimination-message, *i.e.*, that use of Febreze products reduces malodor to a point where the malodor is not detectible by the average person. After receipt of SCJ’s criticisms of the testing methodology, P&G conducted further DFC testing which, P&G argues, shows that SCJ’s criticisms of the DFC test methodology were invalid.

SCJ argues that P&G’s DFC testing is flawed, and cannot support olfactory-level elimination claims. SCJ also offered its own testing on selected Febreze products, which, according to SCJ, showed that the products reduced, but did not eliminate, the perception of malodor. SCJ conducted additional testing after receipt of P&G’s criticisms of SCJ’s testing methodology, and SCJ contends that the additional testing results show that P&G’s methodological criticisms were invalid.

SCJ also argues that explanations concerning the Febreze technology and how it works are not acceptable substitutes for testing measuring the impact of the OdorClear technology at the molecular level. It argues therefore that P&G has no evidence to support any molecular-level elimination claims.

##### **2. P&G's DFC Testing**

Much of the lengthy expert statements in the record in this Complex proceeding (more than 150 pages in total) focused on P&G’s DFC testing and its methodology and the significance of the results. NAD’s discussion of those issues is set forth in its Decision at 6-13.

NAD concluded at the outset of its analysis that “unqualified promises” such as “eliminate” “require stronger supporting evidence than odor reduction evidence.” NAD Decision at 4-5.

P&G’s basic DFC test methodology is described by NAD on page 7 of the Decision. In general, the testing used panels of 10-16 expert graders, not consumers, to evaluate Febreze. The expert graders were not asked to rate the degree of the intensity of the odor, and/or whether the odor was detectible, but rather to rate the intensity of the odor after treatment with Febreze on a 15-point scale (–7 to +7) compared to a reference chamber containing malodor alone, which represented

the zero point on the scale. The numbers  $-1$  to  $-7$  represented odor that was less intense than the reference odor, and  $+1$  to  $+7$  more intense. The panelists were instructed that, on the 15-point scale, a rating of  $-7$  to  $-3$  indicated “much weaker than identified reference control,” and that they should assign a  $-7$  rating if there was no perceptible odor.

There are a number of disputed methodological issues concerning the DFC testing, including (i) whether the DFC test chamber on most testing (12.2 cubic feet) was too small, (ii) whether the P&G methodology followed or conflicted with published test protocols/standards, (iii) the level of initial odor and amount of Febreze product dosing, (iv) whether the expert graders were properly blinded, (v) the timing of the expert evaluation of the chamber following introduction of the Febreze, (vi) the validity of the statistical analyses performed on the data, and (vii) whether the data generated in the testing supported the challenged claims. P&G argues that its methodology was evaluated and endorsed by a leading expert in sensory science who supported its position at NAD and on the NARB appeal, while SCJ points out that testing approach was developed internally at P&G, and that P&G only sought independent review after SCJ filed its NAD challenge.

One key disputed issue concerned an adjustment factor of 2.5 units on the 15-point scale. See NAD Decision at 11. As reported by NAD, in its DFC testing P&G concluded that the Febreze product had eliminated odor when the malodor-plus-Febreze chamber was rated on the 15-point scale within 2.5 units of the ratings for the chamber with Febreze product only (no malodor in the chamber).

To illustrate the use of the adjustment factor, assume that an expert grader rated the odor in the chamber containing odor plus product as  $-4$  and the product only chamber as  $-6$ . Even though the Febreze product was not rated at the scale-point ( $-7$ ) which represented no odor, this would be recorded as showing that Febreze had eliminated the malodor.

P&G justified this 2.5 unit adjustment by contending that expert graders are more sensitive in detecting odors than typical consumers. P&G argued that the amount of the adjustment factor was determined based on testing that correlated consumers compared to experts.

NAD, however, concluded “that the 2.5 scale P&G used to determine elimination of odor was not consumer relevant,” noting that in the correlation analysis the expert graders rated malodor on an intensity scale whereas consumers were evaluated on a pleasantness scale. See NAD Decision at 12.

#### **E. SCJ’s Testing**

As noted, an independent expert for SCJ (from the consulting firm Dragonfly SCI, Inc.) conducted

odor-reduction tests on selected Febreze products using consumer panelists. This testing did not use the different-from-control approach, but rather asked consumer panelists to rate the odors on a scale running from no aroma at one end to strong aroma at the other. The testing, according to SCJ, showed that Febreze reduced, but did not eliminate, malodor.

After reviewing the results in the Dragonfly testing and retesting, NAD concluded that this testing “provided additional evidence and reinforces NAD’s concerns about whether the Advertiser testing supported its odor elimination claims.” NAD Decision at 14. P&G disputes this conclusion, arguing that because it had satisfied its initial burden of supporting the challenged claims, the evidence burden of proof shifted to SCJ and that the Dragonfly testing was too weak to satisfy SCJ’s burden-of-proof obligation.

#### **F. Schedule of Claims that NAD Recommended Be Discontinued**

Before proceeding to the analysis, the panel believes that it is helpful to consider the specific claims at issue. As noted, NAD recommended that 19 express and two implied claims be discontinued, and those claims are set forth below.<sup>3</sup> As is apparent, many of the elimination claims are made for the entire Febreze line.

The references to “eliminate” in the express claims are highlighted in bold. Numbers 3 and 15 are the only express claims with no express reference to “eliminate.”

1. “Febreze safely **eliminate[s]** odors.”
2. “OK, real talk: We aren’t the first air freshener. But we are the first of its kind to actually **eliminate** stink...thanks in part to our OdorClear technology.”
3. “No cover up here – Febreze has the only lineup of air fresheners that truly clean away stink. So whether you’re looking for an instant burst of “ahh” or continuous freshness, you know we’ve got your back (and nose). Check out all the ways we can help keep your life guest-ready and odor-free.”
4. “Febreze Air **eliminates** odors in an instant.”
5. “Typical air fresheners just add another smell to the mix, but Air Effects actually **eliminates** airborne odors and leaves an instant burst of lightly scented freshness in its wake.”

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<sup>3</sup> The schedule of claims, taken from the NAD Decision, includes No. 20 even though it is a duplicate of No. 10.

6. “Your go-to air freshener for any odors that arise: Air Effects doesn’t just mask stinky air, it instantly **eliminates** it.”
7. “Want to **eliminate** odors without heavy overwhelming scents? We get it. Introducing Febreze Light. It eliminates odors with no heavy perfumes in light scents you’ll love.”
8. Febreze Fabric Refresher “**eliminates** sunk-in-stink with long-lasting freshness.”
9. “Did you know the source of odor in your home could be all your soft surfaces? Odors get trapped in your home’s fabrics and resurface over time. Febreze Fabric Refresher **eliminates** odors. Its water-based formula safely penetrates fabrics where odors hide.”
10. “Did you know that your nose gets used to the odors in your home? That’s right. You go noseblind, but others smell...this. Luckily, there’s Febreze Plug. It continuously **eliminates** lingering odors ....”
11. “Over time, you go noseblind, but others smell...this. That’s why Febreze Plug has two alternating scents, and it **eliminates** odor for 1200 hours.”
12. Febreze Small Spaces is an “odor **eliminator**.”
13. “Unlike the leading cone, [Febreze] Small Spaces continuously **eliminates** odor in the air and on surfaces so they don’t come back for 45 days. Just imagine what it can do with other odors.”
14. “For bathroom odors that linger, try Febreze Small Spaces. Just press firmly and it continuously **eliminates** odors in the air and on soft surfaces for 45 days.”
15. “Don’t forget all your favorite nooks and crannies: Small Spaces prevents lingering odors for up to 45 days.”
16. “Strike a match on odor **elimination**. Shop Febreze Candles.”
17. Febreze Wax Melts “**eliminate**[] odors & freshen[].”
18. Febreze Car Vent Clips are the “best car air fresheners to **eliminate** car odors for good.”
19. “With two times the scent power of regular Febreze, Unstoppable Fabric finds, neutralizes, and **eliminates** tough odors trapped in hard to wash fabrics like couches or smelly sports equipment...Stop sneaky odors from lingering in your home with

Febreze Unstoppables.”

20. “Did you know that your nose gets used to the odors in your home? That’s right. You go noseblind, but others smell...this. Luckily, there’s Febreze Plug. It continuously **eliminates** lingering odors ....”

\* \* \*

21. Every Febreze product reduces odor to an olfactory level that is not detectable to the average consumer.
22. Every Febreze product reduces all types of odor to an olfactory level that is not detectable to the average consumer.

### G. Discussion

The panel begins its analysis of the DFC testing with the observation that it agrees with NAD’s premise that the advertiser’s unqualified “eliminate odors” claims are absolute, and must be supported with “stronger supporting evidence than odor reduction evidence.” See NAD Decision at 5. This is consistent with the principle that standards for claim support are flexible, and more impactful claims typically require the imposition of higher standards.

In addition, the challenged odor-elimination claims address the key feature of air freshener products – the reason consumers purchase them. Many of the claims, moreover, in context also promote Febreze as providing a unique product characteristic – the neutralization of malodor molecules and compounds.

A review of several of the challenged claims illustrates why a high level of support should be required for the challenged claims. For example, in claim #2 in Section G, the claim states “real talk . . . we are the first [air freshener] to actually eliminate stink,” a strong unqualified claim touting a unique product characteristic. Similarly, claim #5 states that “typical air fresheners just add another smell to the mix, but [the Febreze product] actually eliminates airborne odors,” another category uniqueness claim.

Claim #6 states: “Air Effects does not just mask stinky air, it instantly eliminates it.” Representing that the elimination of odor occurs instantly provides another example of a dimension of the advertising claims that, in the view of the panel, calls for the imposition of strict standards of claim support. Another example is claim #8: The Febreze product “eliminates sunk-in stink,” i.e. a molecular-level elimination claim. The odor-elimination messages, moreover, are reinforced in the visual presentations in commercials depicting the disappearance of malodor sources after application of the Febreze product.

For these reasons, the panel concludes that air freshener claims that assert that the product “eliminates” odors should be held to a level of support high enough to show actual elimination or absence of odors, rather than simple odor reduction. In its application of that standard, the panel does not distinguish between what NAD referred to as molecular-elimination claims and olfactory-elimination claims. The panel agrees with the NAD that a number of the challenged claims make molecular-elimination claims, for example eliminating “tough odors trapped in hard to wash fabrics like couches or smelly sports equipment” (claim #19). However, all of P&G’s odor-elimination claims should be scrutinized closely by a high standard of support.

With the applicable standard in mind, the panel has carefully reviewed the evidence concerning P&G’s DFC testing, and concluded that it does not support the challenged odor-elimination claims. There are a number of areas for concern with the DFC testing. To cite a few, the panel agrees with NAD’s concern regarding the adjustment factor of 2.5 units on the 15-point scale. As NAD pointed out, the correlation study compared experts rating odors on an intensity scale, compared to consumers on a pleasantness scale, thereby calling into question the consumer relevance of the data.

In addition, whereas the expert graders were directed to record no odor as -7, in only about 20% of the ratings did the Febreze plus malodor chamber receive an “elimination” rating. Given that the graders were trained experts regularly used by P&G, the panel does not accept that the principle of “endpoint avoidance” allows P&G to explain away these results in its testing that undercut its elimination claims. The panel also had concerns about the amount of Febreze product introduced into the 12.2 cubic foot test chambers.

The panel understands that P&G was seeking to develop a methodology that would allow efficient testing of numerous products being tested against a variety of malodors, and concludes that P&G’s efforts were in good faith. Nothing in this decision should be interpreted as indicating that P&G does not have proper support for claims of odor reduction for its Febreze products.

In addition, the panel concludes that P&G has sufficient documentation of its OdorClear technology to support mode-of-action claims that are not combined with odor-elimination claims. And, as did NAD, the panel points out that claims of instantaneous or continuous action not presented in combination with odor-elimination claims are not precluded by this decision.

## **H. Conclusions and Recommendations**

The panel recommends that P&G discontinue the twenty express claims set forth above in Section G. The panel further recommends that P&G discontinue the two challenged implied claims (Nos. 21 and 22 in Section G above).

The panel thanks P&G and SCJ for participating in industry self-regulation in the interests of promoting truth in advertising.

**I. Advertiser's Statement**

P&G fundamentally disagrees with NARB's decision and maintains that Febreze odor elimination claims are supported by reliable testing and in-market data. P&G is disappointed that the NARB discounted the science and real-world experience of consumers and went against established precedent on odor elimination claims in its decision. Nonetheless, P&G will take NARB's guidance into account when developing claims in this category.

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