

Parties: The Glad Products Company / Reynolds Consumer Products LLC
Product: Glad ForceFlex MaxStrength Drawstring Bags
Product Type: Household Products
Disposition: Modified / Discontinued
Claim: Disclosure

BBB NATIONAL PROGRAMS

NATIONAL ADVERTISING DIVISION

REYNOLDS CONSUMER PRODUCTS LLC,
Challenger,

THE GLAD PRODUCTS COMPANY,
Advertiser.

Case No. 7309
Closed 03/28/2024

FAST-TRACK SWIFT CASE

Basis of Inquiry: As part of NAD’s Fast-Track SWIFT program designed to quickly and efficiently review advertising claims that involve a single well-defined advertising issue, Reynolds Consumer Products LLC (“Reynolds” or “Challenger”) challenged whether consumers would be misled by the claim made by The Glad Products Company (“Glad” or “Advertiser”) that that Glad ForceFlex MaxStrength bags (“MaxStrength Bags”) are “25% more durable.”

I. Fast-Track SWIFT Eligibility Determination

The substance of the challenge relates to whether Glad’s presentation of its claim that its MaxStrength Bags are “25% more durable” than Glad’s own ForceFlex Bag is misleading in the forms in which it variously appears in internet search results, Glad’s website, and MaxStrength Bag packaging. Glad objected to the placement of the challenge in Fast-Track SWIFT, arguing that because there are multiple issues, claims and, media (and particularly packaging) involved that the challenge should be adjudicated on NAD’s standard track. Reynolds argued that SWIFT jurisdiction is appropriate because the challenge concerns a single well-defined issue that does not require review of complex evidence or substantiation. NAD determined that the challenge could proceed in Fast-Track SWIFT as it presented the single issue of whether Glad’s “25% more durable” claims are misleading as presented and not whether any claim regarding durability is substantiated.

II. Decision

A. The Challenged Advertising

During the proceeding, the Advertiser informed NAD that it would voluntarily discontinue or modify the claim “Glad® ForceFlex MaxStrength™ trash bags are 25% more durable† and use less plastic than the competition‡” but will continue to make the two separate durability and plastic composition claims individually. NAD will treat the discontinued and modified claims, for compliance purposes,

as though NAD recommended their discontinuance or modification and the Advertiser agreed to comply.

The challenged “25% more durable” claim appears in various forms across Glad’s website, packaging, and internet search results. In one presentation of the claim, it appears as a compound sentence stating “Glad® ForceFlex MaxStrength™ trash bags are 25% more durable† and use less plastic than the competition‡.” The single-dagger symbol related to a disclosure indicating that “25% more durable” is a comparison to the “Glad® 13 gallon ForceFlex bag” and the double-dagger symbol indicated that “use less plastic” is a comparison to certain competitors. On Glad’s website, the disclosures appear at the bottom of the webpage and require scrolling through other content unassociated with the claim (and occasional restatements of the claim) before reaching the disclosure.¹ In the internet search engine results, the disclosures appear after clicking through to the webpage associated with the search result and scrolling to the bottom of the webpage.

In another iteration, the claim appears as a blue circular badge with text in white that stated “25% MORE DURABLE*” (hereinafter, the “badge”). The asterisked disclosure indicates that the comparison is relative to a “Glad® 13-gallon ForceFlex bag” The asterisked disclosure’s font size, color, and position relative to the badge vary depending on the medium. For example, on Glad’s website, a version of the asterisked disclosure appears in small white text on a grey background picture of a trash bag that is difficult to read due to the size and contrast of the font. And, on Glad’s packaging, the asterisked disclosure most often appears far removed from the badge, in small text, in a color that varies depending on the particular product version.

On Glad’s 120-count packages, a packaging panel includes blue text on a white background with the claim “25% MORE DURABLE*” and the asterisked disclosure “*vs. Glad® 13-gallon ForceFlex bag” in smaller blue text on a white background immediately beneath the claim. On Glad’s packages containing fewer than 120 bags, a panel includes the “25% More Durable*” claim in red text on a yellow background where the asterisked disclosure is far removed from the claim and in small text.

B. Analysis

It is well settled that “[e]ffective disclosures should be in close proximity to the claim they qualify and should be easy to notice, read and understand.”² In considering the adequacy of an advertiser’s disclosure, the NAD has considered (1) the placement of the disclosure in the advertisement and its proximity to the claim it qualifies; (2) the prominence of the disclosure; (3) whether other parts of the advertisement distract attention away from the disclosure and (4) whether the language of the disclosure itself is easy to read and understand taking into consideration the advertisement’s audience.³ NAD further takes guidance from the Federal Trade Commission that disclosures must be “clear and conspicuous,” meaning that “disclosures must be communicated effectively so that consumers are likely to notice and understand them in connection with the representations that the

¹ Glad argued that the disclosure is also viewable on their website by, rather than scrolling, clicking on an enlargeable tile that contains the badge version of the “25% More Durable” claim with its own asterisked disclosure.

² *Procter & Gamble Company (Crest Sensi-Stop Strips)*, Report #5828, NAD/CARU Case Reports (April 2015)

³ See *Global Medical Response, Inc. (Air Ambulance Transport)*, Report #7052, NAD/CARU Case Reports (May 2022)

disclosures modify. Simply making the disclosure available somewhere in the ad, where some consumers might find it, does not meet the clear and conspicuous standard.”⁴ The FTC further encourages immediate proximity between a claim and disclosure where, as here, the disclosure itself is integral to or inseparable from the claim (i.e., the object of the “25% more durable” comparison is integral to the “25% more durable” claim).⁵

The Advertiser argued that it clearly and conspicuously discloses the basis of the “25% more durable” comparison everywhere that it makes the claim. Further, the Advertiser argued that, on packaging, the claim and disclosure appear on all four sides of the packaging, and, on two of the four sides, the claim appears after the statement, “you’re holding our toughest kitchen bag yet,” followed by the disclosure “vs Glad 13-gallon ForceFlex bag.”

NAD found that the disclosures associated with the “25% more durable” claim were not clear and conspicuous. For example, in the image on Glad’s website where the disclosure accompanying the badge is presented in white text on a grey-trash-bag background, the disclosure is difficult to notice or read without zooming in on the image. NAD recommended that the Advertiser modify the “25% more durable” claim to include a disclosure with the object of the comparison that is clear and conspicuous and in close proximity to the claim or incorporated into the main claim.

NAD also examined the disclosures that appeared on the Glad packaging. The Advertiser argued that the panels on the physical packaging clearly disclose that the claim is self-comparative. In all but one presentation, the disclosure was in small font and separated from the claim by various graphics and other text that distracted attention away from the disclosure. Although some versions of some sides of the product packaging include sufficient disclosures, consumers may only look at one panel of the package before making a purchase. Typically, consumers may only see the consumer-facing panel, which in this case contains the badge version of the claim with a disclosure far from the claim it qualifies.

NAD recommended that, when making its “25% more durable” claim, the Advertiser include a disclosure with the object of the comparison that is clear and conspicuous and in close proximity to the claim or incorporated into the main claim on every panel where the claim is made. Reynolds did not challenge, and NAD did not recommend modification of, the iteration of the claim that appeared as text on a panel of the 120 bag-count packages with its asterisked disclosure immediately below it with no intervening graphics or text.

In the context of internet search results, the Advertiser argued that a hyperlinked disclosure for a claim in a space-constrained ad can effectively communicate necessary information to a consumer. Although the asterisk or dagger indicating the disclosure was not itself a hyperlink, NAD looks to FTC guidance that indicates that “[h]yperlinks should not be used to communicate disclosures that are an integral part of the claim or inseparable from it” unless “they are too complex to describe.”⁶ The FTC guidance additionally cautions against hyperlinked disclosures where consumers could purchase a

⁴ Id.; FTC .Com Disclosures, <https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf>

⁵ See FTC .Com Disclosures, <https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf>

⁶ Id.

product at a brick and mortar store or from a third-party online retailer.⁷ Here, the fact that the “25% more durable” is a comparison to Glad’s 13-gallon ForceFlex bag is both integral to the claim and easy to describe, and the product may be purchased at a brick-and-mortar store. Accordingly, NAD recommended that the Advertiser modify the “25% more durable” claim as it appears in internet search results to include the object of the comparison in a clear and conspicuous disclosure in close proximity to the claim it qualifies. Or incorporate it into the claim itself in a manner that does not require clicking through to another website.

NAD also relies on FTC guidance with respect to claims made on product websites. The FTC guidance provides that “[a] disclosure [on a webpage] is more likely to be effective if consumers view the disclosure and the claim that raises the need for disclosure ... together on the same screen” and that “often, disclosures consist of a word or phrase that may be easily incorporated into the text, along with the claim... . Consumers may not see the disclosures if they are required to scroll through the website to see the disclosure.”⁸ NAD recommended that the Advertiser include the object of the comparison in its “25% more durable” claims in a clear and conspicuous disclosure in close proximity to the claim it qualifies that (1) does not require scrolling or clicking on an enlargeable tile to view or (2) is incorporated into the claim itself on a given webpage.

III. Conclusion

With respect to the compound claim “Glad® ForceFlex MaxStrength™ trash bags are 25% more durable† and use less plastic than the competition‡,” the Advertiser informed NAD that it would voluntarily discontinue or modify the claim. NAD will treat the discontinued and modified claims, for compliance purposes, as though NAD recommended their discontinuance or modification and the Advertiser agreed to comply.

NAD recommended that, with respect to its MaxStrength trash bag product, Advertiser modify its “25% more durable” claims to include disclosures that are clear and conspicuous in close proximity or incorporated into the claim itself that indicate that the object of the claim’s comparison is Glad’s own 13-gallon ForceFlex bags to the extent they did not already.

IV. Advertiser’s Statement

Glad agrees to comply with NAD’s recommendations regarding the Glad ForceFlex Max Strength search ads and website. Glad disagrees with NAD’s findings and recommendations regarding the product packaging at issue and plans to appeal that portion of the Decision to NARB. (**#7309 SRM, closed 03/28/2024**)

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⁷ Id.

⁸ Id.