

Appeal Panel summary report

8 February 2018 : Consumer Advertising – Covonia – Facebook post – produced by Thornton & Ross seen 5 October 2017

On 15 November 2017, having first attempted inter-company dialogue, Johnson and Johnson Ltd (“J&J”) raised formal concerns with PAGB about a video posted on Thornton & Ross’s (“T&R”) branded Facebook page on 5 October 2017 which referred to the UK Prime Minister Theresa May and stated: “*Building a country that works for everyone ... Try Covonia*”.

J&J queried whether the ad breached the PAGB Consumer Code because it featured Teresa May. J&J considered this inclusion constituted a recommendation by a person who, because of their celebrity, may encourage consumers to use a medicine. J&J noted the guidance for Rule 47 of the Code states “*Any inclusion of a celebrity within advertising materials, even if not overtly endorsing or recommending the product, is likely to be taken to be celebrity endorsement*”. J&J also considered that as the video was posted the day after a well-publicised tweet by the Prime Minister regarding her health she will have been known to use and endorse the product in question.

In its response, T&R explained that their understanding was the guidance for Rule 47 explains the inclusion of celebrity is likely to be considered endorsement on the basis that they will have been paid, which is not the case in this instance nor something consumers were likely to conclude was the case. T&R considered it was clear the ad was encouraging Theresa May to try Covonia and would not be understood as recommendation by Theresa May to consumers.

J&J’s complaint was considered against PAGB Consumer Code rule 47, first formally by members of the PAGB Senior Management Team (“PSMT”) and then by an independent Advertising Complaints Appeal Panel. On the 7 December 2017 the PSMT concluded there was no breach of the Code. On 30 January 2018 the Panel concluded there was no breach of the Code.

PSMT noted that rule 47 guidance explains that any inclusion is likely to constitute endorsement but does not state that it will in all cases, and that the explanation outlines that the likelihood is related to the fact that in most cases the celebrity will have been paid to appear in the ad. PSMT considered most viewers would recognise the main footage as being from a parliamentary activity which will not have involved advertising, and will be aware that Prime Ministers do not engage in advertising while in post. PSMT consider that viewers would recognise the video as advertising and understand that the animated lettering will have been a manipulation by Covonia, distinct from the original event. Given this, PSMT did not believe consumers would conclude the Prime Minister was paid to be in the ad, actively participated in the ad or approved the ad – and therefore will not view the ad as referencing a recommendation by the Prime Minister.

The Panel agreed with J&J that Theresa May is a celebrity however they noted the video was edited by or on behalf of T&R to suggest that she ‘try’ Covonia and concluded the

average consumer would not consider that Theresa May was recommending or encouraging consumers to use Covonia but rather that the suggestion is she 'try' it.

No further PAGB recourse on the Panel's findings is available. More information about the PAGB Complaints Procedure is available here.

https://www.pagb.co.uk/content/uploads/2016/06/2016-Guidance-on-Complaints-Procedure-Final_for-website.pdf