

PAGB intercompany advertising complaint Appeal Panel summary report

**8 February 2018: Consumer Advertising – NiQuitin Extra Fresh – Own website
– produced by Perrigo seen November 2017**

On 13 November, having first attempted inter-company dialogue, J&J raised formal concerns with PAGB about the claim *“Hit cravings hard with unbeatable flavour* ... *216 person sensory study comparing 2mg mint nicotine gums”* on the NiQuitin Extra Fresh product page of the niquitin.co.uk website.

J&J queried whether the ad made clear that the comparison was only with other mint nicotine replacement gums. J&J believed the headline claim was not clear and that including this information was not sufficient. Even if including the information in the qualifier was sufficient J&J were also concerned the qualifier was not presented with sufficient clarity.

In its response, Perrigo explained they felt the qualifier was clear and makes clear the nature of the comparison. Perrigo also highlighted that no other flavour is referenced and that 81% of the market is mint and this would be the likely consumer experience. Perrigo believed the overall context of the ad makes clear mint flavour is the subject of the comparison’

J&J’s complaint was considered against PAGB Consumer Code rule 4, first formally by members of the PAGB Senior Management Team (“PSMT”) and then by an independent Advertising Complaints Appeal Panel. On the 6 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 considered the asterisks were prominent, the qualification text was legible and was presented in close proximity to the main claim (no scrolling is required). They therefore concluded the qualification was presented clearly. In the context of the ad as a whole and repeated references to mint PSMT also considered the ad made clear the comparison related to the mint flavoured versions of the products. PSMT considered that this impression was reinforced by the asterisked information.

The Panel highlighted that their decision related to the ad in question and that a different presentation could lead to a different decision. The Panel noted the ad in question was static and contained limited information and content. In their view this allowed the disclaimer to be quite noticeable on the first view and sufficiently prominent to support the claim in question. The Panel noted the claim itself did not qualify that the reference market and supportive data relates to mint flavoured products only however they concluded that the presentation of claim in this instance was close to the line, but ultimately not misleading. The Panel felt that the emphasis on mint flavoured nicotine gums in the entire ad would lead to any experience claims being understood in the context of this flavour expression, which they noted covers over 80% of the relevant market. The Panel felt this impression was supported by the top parity claim’s smaller and less prominent font being positioned close but subordinate to the prominent “NiQuitin Extra Fresh Mint Gum” claim.

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