

PAGB Summary Report: Formal Complaint

26 February 2018: Consumer advertising – Gaviscon Double Action Liquid – television ad produced by RB, seen September 2017

On 6 February 2018, having first attempted inter-company dialogue, Bayer raised formal concerns with PAGB about an ad for RB's product Gaviscon Double Action Liquid, seen on television in September 2017. The ad was also available on YouTube.

Bayer objected that an unbranded red pack of antacids tablets featured in the ad was identifiable as Bayer's product RENNIE, and that the ad therefore cast RENNIE in a derogatory light.

In its response, RB noted that there was no reference to the RENNIE brand in the advert, and therefore no need to ask Bayer for permission to use their brand name. They asserted that the unbranded pack had several notable differences to the RENNIE pack and provided several examples. RB argued that the pack bore a similarity to other generic packs and was unlikely to be seen by consumers as representing RENNIE specifically.

Bayer's complaint was considered formally by members of the PAGB Senior Management Team ("PSMT") on 23 February against PAGB Consumer Code rule 39. The PSMT concluded there were no breaches of the Code.

The PSMT considered that the key point was whether the Bayer product was identified in the ad. If RENNIE was not identified then the PAGB rules in relation to comparisons with identifiable competitors and the prohibitions denigrating competitors would not be relevant.

PSMT considered that there were several distinct differences between the pack featured in the ad and packaging for RENNIE. The font and positioning of the wording was different, the red of the pack was not the same as the RENNIE brand. The unbranded pack used did not feature the blue band or flavour stated on the RENNIE pack, and the tablet featured was a different shape.

The only visual point of similarity that PSMT noted was that the box was red, and PSMT noted that it was not the same red. It was a darker red more closely linked to generic products than the Rennie red; PSMT considered that RB had taken visual cues from the generic packs and genericised them further. Although PSMT could understand Bayer's frustration at the appearance of the various generic packs on the market it considered that RB had ensured that RENNIE is not identified. It was the view of the PSMT that viewers would interpret the ad as generally referring to a generic product and not specifically to RENNIE.

Although PSMT did not consider that RENNIE was identified by the ad, it gave consideration to whether or not the ad would denigrate RENNIE, should it have been identified. The ad claimed that Gaviscon provides "Soothing relief even when lying down" and indicated that this may not be the case for all products. The PSMT did not consider this to be derogatory.

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