



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Advertising Practices

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Andrea C. Levine
Vice President, Director
National Advertising Division
Council of Better Business Bureaus, Inc.
70 West 36th Street
New York, NY 10018

Re: Resolution of Powerade Zero Referral

Dear Andi:

I write to update you on the results of our investigation into the advertising for Powerade Zero, a matter which was referred to the Federal Trade Commission in May as the result of a second compliance proceeding, after which the advertiser declined to accept the NAD's recommendations.

We reviewed the record from the compliance proceeding relating to Powerade Zero that triggered the referral, as well the records from the original proceeding and the first compliance proceeding, both of which occurred in 2006 and relate to Powerade Option, a product that has been discontinued. We also reviewed relevant scientific literature describing the particular needs for hydration, electrolytes, and carbohydrates during exercise of varying intensity.

After a careful analysis, we respectfully disagree with both the underlying rationale of the NAD's decision relating to comparative claims in the original proceeding, and its application to the specific advertisement at issue in the second compliance proceeding. In the original proceeding, Stokely-Van Camp, Inc. ("SVC"), the subsidiary of Pepsi-Co, Inc. that is the manufacturer of Gatorade, challenged advertising by The Coca-Cola Company comparing Powerade Option to Gatorade on the basis of calorie content. Labeling and advertising for Powerade Option touted the fact that the product contained 80% fewer calories than Gatorade, with Powerade Option containing 10 calories per serving versus Gatorade with 50 calories. In its decision (*Coca-Cola Company*, NAD Case Reports #4438 (January 2006)), the NAD concluded that the calorie comparisons between Powerade Option and Gatorade failed to disclose material differences between the products, namely, the fact that the carbohydrates and calories in Gatorade provide energy and are a key benefit to many consumers of sports drinks.

Without an industry standard or FDA standard of identity to define the term "sports drink," we believe that a reasonable consumer would understand the term to mean a beverage suited for consumption before, during, and after exercise or physical activity. To this end, we believe a reasonable consumer would expect a "sports drink" to provide hydration benefits and to replace

electrolytes lost through perspiration. While some consumers engaged in especially vigorous or prolonged physical exertion lasting more than one hour might also require carbohydrates to fuel their activity, many other consumers engaged in less vigorous activity, activity of lesser duration, or exercising with the specific intention to lose weight, might not.

We disagree that any additional disclosure by The Coca-Cola Company was required to communicate the fact that Gatorade's calories provide energy replacement benefits that Powerade Option does not. We essentially agree with the position argued by the advertiser, that reasonable consumers understand that no calories means no carbohydrates, and therefore, no energy component. We also note the availability of other low-calorie sports drinks in the marketplace, including the G2 line of drinks from SVC, which contains only 25 calories per serving. Therefore, we believe that the calorie comparisons between Powerade drinks and Gatorade drinks provide valuable information to consumers wanting to make an informed choice.

The television advertisement at issue in the second compliance proceeding promoted Powerade Zero, a product with zero calories that replaced Powerade Option. The ad depicts two rock climbers who take a break for a drink, with one drinking Powerade Zero and the other drinking Gatorade. Titles on the screen indicate that Powerade Zero contains zero calories, while Gatorade contains 50 calories. The Gatorade drinker's rope stretches and snaps and he falls to the ground, but he immediately gets up and walks away unharmed, saying "Walkin' it off!" The advertisement ends with the tagline, "Powerade Zero, the zero calorie sports drink."

We respectfully disagree with the NAD's conclusions that the advertisement implies that Powerade Zero performs as well as Gatorade for replenishing energy depleted after engaging in strenuous activity, and that a disclaimer that Powerade Zero has no energy component is required. The advertisement is unmistakably humorous and hyperbolic in nature. The rock climbers are depicted at rest and do not appear exhausted, fatigued, or even breaking a sweat. We believe the advertisement's exaggerated depiction of the effects of weight gain caused by the calories in Gatorade does not convey any superiority message regarding the performance qualities of Powerade Zero aside from its calorie content. Accordingly, we believe that no disclaimer was necessary and, therefore, that no further FTC action is warranted.

We appreciate receiving your referral and having the opportunity to review this matter.

Very truly yours,



Mary K. Engle
Associate Director

cc: Christine H. Miller, Esq.