



United States of America  
FEDERAL TRADE COMMISSION  
Washington, D.C. 20580

Division of Advertising Practices

October 17, 2018

Laura Brett, Esq.  
Director  
National Advertising Division  
112 Madison Avenue, 3<sup>rd</sup> Floor  
New York, NY 10016

Re: NAD Referral of Aubio Life Sciences' Advertising for Cold Sore Treatment Gel

Dear Ms. Brett:

I am writing to follow up on the NAD's referral to the FTC of its inquiry about Aubio Life Sciences' claims for its Cold Sore Treatment Gel. Competitor GlaxoSmithKline Consumer Healthcare, L.P. brought this matter to NAD's attention. Your referral indicated that Aubio participated in NAD's self-regulatory process and agreed to discontinue most of the claims at issue, but it disagreed with NAD's recommendation to discontinue claims that its product provides a benefit prior to the formation of a cold sore, i.e., during the "tingling" phase. Accordingly, you referred this matter to the FTC for our review of that claim.

We have been in contact with Aubio to discuss the advertising claim at issue. We understand that, after the referral to the FTC, Aubio further modified its advertising and promotional materials to make it clearer to consumers that its product is intended for providing relief from pain and itching associated with a cold sore. For example, Aubio modified the order of phrases in its commercial to now state "Apply Aubio at the first sign of a cold sore for temporary relief of pain and itching associated with cold sores." Similarly, current display cards and product labels read "fast and effective temporary relief of pain and itching." We understand that proposed FDA rulemaking amending the tentative final monograph allows marketers of products containing particular external analgesic active ingredients to state, "For the temporary relief of pain or itching associated with cold sores." 21 C.F.R. 348.50(b)(5) (External Analgesic Drug Products for Over-the-Counter Human Use; Proposed Rulemaking for Fever Blister and Cold Sore Treatment Drug Products, 55 Fed. Reg. 3370, 3382-83 (1990).

Upon review of the matter, we have determined not to take additional FTC action at this time. The Commission reserves the right to take such further action as the public interest may require. The FTC fully supports the NAD's self-regulatory process, and we appreciate your referral and the opportunity to continue to assist in supporting the NAD.

Very truly yours,

Devin Willis Domond  
Chief of Staff for Advertising Practices