

THE GILLETTE COMPANY**Fusion ProGlide Razors**

Challenger:

Energizer Personal Care, LLC

-- In the absence of consumer perception evidence, NAD uses its expertise to determine the express and implied messages reasonably conveyed in an advertisement.

Basis of Inquiry: Performance claims in broadcast, print, Internet and on product packaging for The Gillette Company's Fusion ProGlide Razors were challenged by Energizer Personal Care, a competing manufacturer of razors and other personal care products. The following claims are at issue:

"Fusion ProGlide has been engineered with Gillette's thinnest blades ever so it glides for less tug and pull"

"New Gillette Fusion ProGlide turns shaving into gliding with thinner blades for less tug and pull* and an effortless glide. (*leading blades vs. Fusion")

"THINNER, FINER BLADES*

Re-engineered with low cutting force blades with thinner, finer edges* and our advanced low-resistance coating enable the blades to cut effortlessly through facial hair with less tug and pull than Fusion. (*leading blades vs. Fusion")

Challenger's Position:

I. "Gillette's Thinnest Blades Ever"; "New Gillette Fusion ProGlide turns shaving into gliding with thinner blades for less tug and pull* and an effortless glide";

The challenger argued that the claim that ProGlide has "Gillette's thinnest blades ever" can reasonably be interpreted by consumers to mean that *all* of the ProGlide blades within a ProGlide blade cartridge are the thinnest, particularly since, in the television commercial, this claim is made adjacent to a depiction of an entire ProGlide cartridge (showing all six blades). Similarly, the print advertising and product packaging contain a visual of a magnification of all five front blades in connection with the claim "Gillette's thinnest blades ever." The challenger asserted that these claims are false because not all of the blades are, in fact, Gillette's thinnest. In fact, the advertiser conceded that the fifth blade in its cartridge is slightly thicker than the first four blades.

The challenger further argued that the advertiser failed to provide any measurements to support its "thinnest blades ever" and "thinner, finer blades" claims, despite its position that the thickness of the blade at the tip is the critical dimension because this is where the blade initiates the cut into the hair. In support of its position, the challenger relied upon its atomic force microscope ("AFM") testing demonstrating that the tips of its Hydro blades are dimensionally smaller than those of the advertiser's ProGlide blades. The challenger also noted that the difference between the ProGlide and Fusion blade tips is microscopic – a .5 micron (or .00001965 inches) difference

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in the width of the blade measured 10 microns from the tip between the Fusion blades and the first four ProGlide blades. This microscopic change only occurs at the tip and, according to the challenger, is not a consumer meaningful benefit. Further, its testing shows that the additional sixth trimming blade on the ProGlide is not thinner than the trimming blade on the Fusion.

As for the claims that ProGlide has Gillette's thinnest blades ever so it glides for less tug and pull," the challenger asserted that in order to support such a performance claim, the advertiser is required – but failed – to provide testing demonstrating both that (1) all of the ProGlide blades are thinner than all of the Hydro blades and (2) the ProGlide has less tug and pull than the Hydro.

II. References to “Leading Blades” and “Leading Product”

The challenger maintained that the advertiser uses the term “leading” in several executions of its ProGlide advertising to qualify its thinness claims (i.e., by a disclaimer that states “leading blades v. Fusion”). In this context, the challenger argued, consumers will reasonably interpret “leading blades” to mean “leading product” and not as a technical term meaning one blade ahead of another (or first in a series of blades) – a definition that stems from industry specific patent documents that consumers cannot be expected to know of, let alone understand, without further explanation. The challenger also argued that compounding this confusion is the advertiser's interchanging references to “leading blades” and “leading product” in various iterations of its advertising.

According to the challenger, the advertiser's claims comparing the ProGlide to the “leading product” are false and misleading because the advertiser's ProGlide is the true market leader in the razor category and comparing a product to itself is illogical. In support of its position, the challenger relied upon a Nielsen market share report ending the week of September 25, 2010 which shows that the Fusion ProGlide had the highest market share in men's razors for that week and has held the number one market share position for each four-week period since June 5, 2010. The challenger noted, however, that at certain time periods, Hydro, not Fusion, was the leading product according to Nielsen. The challenger argued that market share differences between men's razors are constantly changing in this dynamic market and, therefore, the comparison is both highly confusing to consumers and unsubstantiated.

Advertiser's Position:

I. “Gillette's Thinnest Blades Ever”; “New Gillette Fusion ProGlide turns shaving into gliding with thinner blades for less tug and pull* and an effortless glide.”

The advertiser argued that, contrary to the challenger's interpretation, it does not claim that *all* of the ProGlide blades in its cartridge are Gillette's thinnest ever and rejected the challenger's contention that every blade in the razor must feature the Low Cutting Force [“LCF”] blades in order to make this claim. The advertiser maintained that its qualification, “leading blades,” makes clear that the “thinness” claim is limited to the first four blades in the razor. The advertiser referred to the challenger's use of the phrase “leading blade” in its patent filings and

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consumer materials as underscoring its common and understandable nature. The advertiser further noted that the challenger fails to point to any consumer perception data demonstrating consumer confusion as to the meaning of its “leading blades” qualification.

As for the truth of its “less tug and pull and an effortless glide” performance claim, the advertiser presented consumer use data as support for its claim of the mixed-blade structure of the ProGlide and how it provides optimal performance and an incredibly close shave.

The advertiser argued that its claim that the ProGlide uses “Gillette’s thinnest blades ever” is also supported by its testing using an Automatic Linnik Interferometer (“ALI”)¹ measuring the actual thickness of the blade, specifically LCF blades. The advertiser rejected the challenger’s contention that the difference in LCF blades is microscopic and undetectable by consumers, arguing that small differences in the blade width in fact lead to noticeable changes and greater blade performance, particularly in this product category. Specifically, the challenger’s measurement of a 0.5 micron difference in blade tip thickness between the Fusion manual and ProGlide manual, if true, is a significant dimensional change representing a reduction of up to 10 percent in blade thickness. Using a Single Fiber Cutter (“SFC”)² to assess the cutting force of the blades, the advertiser contended that the cutting force required to cut beard hair by a ProGlide blade is statistically significantly less than that which is required for a Fusion blade.

As for the challenger’s contention that the “[r]est of the ProGlide blade thickness (i.e., the portion of the steel that is not ground to an edge) is virtually the same thickness as the Fusion blades,” the advertiser countered that changes to the razor’s *ground blade tip* drive cutting performance (*not* changes to unground steel), and that it is this sharpened blade tip that is the portion of the razor that cuts the hair. The advertiser again referred to its testing which shows the LCF blade edge on ProGlide is thinner than Fusion blades at multiple points past the ultimate tip at T4, T8 and T16³, respectively. The advertiser noted that its technical and consumer testing fully substantiate this claim and that the challenger’s testing fails to refute it because it shows that the ProGlide blades are thinner than the Fusion blades.

II. References to “Leading Blades” and “Leading Product”

The advertiser argued that its reference to the Fusion as the “leading product” in its comparison of razor performance is clear, supported and accurate. In determining which razor is the “leading product,” the advertiser asserted that this calculation includes the combined sales of razors and shaving cartridges, not simply the razor category as the challenger contends. The advertiser argued that the Fusion easily outsells Hydro in both dollar and unit sales in the razor and cartridge category and that even in the “razor only” category, its Fusion manual leads the group in the full span of time in which both Fusion manual, Fusion power, Hydro 3 and Hydro 5 were available on the market. Further, the advertiser also maintained that although the market share of the Hydro product may change constantly, Fusion sales do not exhibit this same

¹ The testing was submitted to the NAD on a confidential basis.

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³ i.e., four, six and 16 microns from the ultimate tip of the blade.

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volatility such that consumers are not being misled by the comparison to Fusion as the “leading product.”

Decision:

The challenged commercial depicts a reporter announcing the “Fusion ProGlide Challenge” as he enters a locker room where men are in the process of shaving. The reporter asks one man “how’s your shave.” The man responds that he can feel a “tug and pull” on his stubble. The reporter then shows him a video of how shaving causes this tug and pull. The voiceover then announces, “that’s why Gillette is introducing its revolutionary new Fusion ProGlide.” The men then start shaving with the Fusion ProGlide and are pleased with its performance (“it’s like gliding down, you know”). The voiceover goes on to say that “now Fusion ProGlide has been engineered with Gillette’s thinnest blades ever so it glides for less tug and pull” during which time an animation of a blade is shown with a sliver sheared off from the top. This is followed by side-by-side images of magnified beard hairs and a simulation of a blade trying to cut them; the image on the left (the “leading product”) shows more “tug and pull” before the blade cuts the hair than the image on the right (the Fusion ProGlide), which immediately cuts the hair. In the print and Internet advertisements and on product packaging, the product is featured alongside claims such as “thinner, finer blades*” qualified by the disclosure “leading blades vs. Fusion” with the entire razor shown (and in other iterations, a circle around all of the blades, not simply the first four blades).

In the absence of consumer perception evidence, NAD uses its expertise to determine the express and implied messages reasonably conveyed in an advertisement.⁴ NAD determined that all of the advertisements reasonably convey the message that *all* of the blades in ProGlide are Gillette’s thinnest (and thinner than the leading product), not simply the first four blades. The circle around all of the blades in some print and Internet advertising only reinforces this takeaway. Further, NAD determined that the reference to “leading blades” does little to clarify that the claim is limited to the first four blades. Although the term “leading blades” appears in patent filings, NAD determined that consumers would not be familiar with this term as they do not typically read patent documents. Accordingly, consumers could reasonably interpret “leading blades” to mean “leading product” particularly given that the advertiser also refers to the “leading product” in the same advertisements.

As for the reasonable message conveyed by the term “leading product,” although Fusion is identified as the basis of comparison in the print and Internet advertisements and on product packaging, it is not identified in the commercial. Moreover, the language in the commercial (e.g., *Gillette’s* “thinnest blades”) does not make clear whether the “leading” product is a Gillette product (Fusion) or a competitor’s product. In the absence of any identification of the object of comparison in the commercial, NAD reviewed the Nielsen market share data to determine which product is, in fact, the “leading product.” In doing so, the question for NAD is which market share data are more relevant – razors or razor systems (razors + cartridges). NAD observed that

⁴ Campbell Soup Company (Campbell’s Tomato Juice From Concentrate), Report #4932, *NAD/CARU Case Reports* (November 2008).

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the challenged advertising does not feature a razor system but, rather, the individual razor product. Moreover, both the Fusion and the challenger's Hydro products were launched in 2010 and are fairly new to the market such that consumers could potentially still be purchasing the individual unit and not simply the refill cartridges. Consequently, NAD concluded the market share for razors is more pertinent and reveals that Fusion was not the leading brand throughout all the relevant time periods. Further, given that Hydro was also a leading product at certain time points, the advertiser would need to provide testing comparing the thinness of its blades as against those of Hydro. The record makes clear that the advertiser failed to provide such testing.

Concerning the advertiser's testing, it is uncontested that the ProGlide blades are thinner than its Fusion blades. The question for NAD is whether the difference is consumer meaningful and whether measurements at the ultimate tip of the blade (which the challenger, but not the advertiser, has measured) are needed in order to substantiate the claims. First, with regard to the measurements at the ultimate tip, the challenged advertising does not convey, either expressly or by implication, that the *ultimate tip* of the blades are thinner – the claims simply refer to the “blades” and the entire blade is shown. Further, when part of the blade is shown to be sliced off (illustrating that the blade is thinner) what is depicted is not the tip but, rather, the first half of the surface of one entire blade. Moreover, there is no evidence in the record that the ultimate tip is the key consideration both in terms of the thinness of the individual blade or in assessing cutting force as it relates to reduced tug and pull as claimed in the challenged advertising. Thus, the fact that the challenger's testing shows that the ultimate tip of its Hydro razor is thinner than that of the Fusion ProGlide has no bearing on the truthfulness and accuracy of the advertiser's claims.

NAD has consistently held that product testing results must not only be statistically significant but also consumer meaningful.⁵ NAD determined that even if statistically significant, the claimed difference in blade thickness would not be consumer-perceptible given that the blades on razors generally are extremely thin. Both parties' testing show that the Fusion ProGlide blades (measuring at up to 16 microns and 10 microns from the ultimate tip, respectively) are thinner than those of Fusion – a difference of up to 10 percent according to the challenger's testing and between 9-11 percent according to the advertiser's testing. As to the issue of whether or not this difference is consumer meaningful, NAD reviewed the advertiser's consumer use testing.

The independent two-week consumer use testing consisted of 240 participants from geographically-dispersed markets who used wet shavers on a regular basis. The panelists used the control product (Fusion or Fusion Power) and the test product (ProGlide or ProGlide Power) each for one week and were asked to complete a daily shave diary rating the product from one (poor) to five (excellent) after each use for the following attributes: overall; comfort during shaving; freedom from nicks; and comfort after shaving. However, the advertiser only provided NAD with a summary of the resultant data which failed to demonstrate a quantified percent difference in the attributes in order to determine the extent to which the higher ratings for the advertiser's product were consumer meaningful.

⁵ Unilever United States, Inc. (Dove Beauty Bar), Report #5197, *NAD/CARU Case Reports* (July 2010); Bissell Incorporated (Proheat™ Clearview™ Extractor), Report #3897, *NAD/CARU Case Reports* (April 2002).

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NAD next reviewed the advertiser's Single Fiber Cutter Study, a laboratory test to determine the cutting force needed to cut a single beard hair using the ProGlide manual razor versus the Fusion manual razor (all samples were new as manufactured).⁶ The speed at which the hairs were cut was intended to mimic shaving. Eighty samples were tested for each razor and the results showed an average reduction in cutting force of 20 percent, a statistically significant result at a 95 percent confidence level.

Based on the foregoing, NAD recommended that the advertiser modify its claims as to "leading blades" to make clear that it is referring only to the first four blades in its cartridge, and, to ensure that the challenged performance claims (including the reference to the "leading product"), make clear that the basis of comparison is to its Fusion razor to avoid any unsupported product performance comparisons as to competing razors. NAD concluded, however, that the advertiser's claims of "less tug and pull" and "an effortless glide" were supported but, again, only as against the Fusion razor and recommended that the advertiser limit these claims accordingly based on the evidence in the record.

Conclusion:

NAD recommended that the advertiser modify its claim as to the references to "leading blades" to make clear that it is referring only to the first four blades in its cartridge and ensure that the challenged performance claims (including the reference to the "leading product") make clear that the basis of comparison is as to its Fusion razor to avoid any unsupported product performance comparisons as to competing razors. NAD concluded, however, that the advertiser's claims of "less tug and pull" and "an effortless glide" were supported but, again, only as against the Fusion razor and recommended that the advertiser limit these claims accordingly based on the evidence in the record.

Advertiser's Statement:

The Gillette Company engineered its Fusion ProGlide razor with many product innovations to delight men and deliver an exceptional shave. Gillette is pleased that the NAD has found the ProGlide to outperform Fusion with less tug and pull, thinner, finer blades, and effortless glide. Gillette respectfully maintains that its comparison to "leading product" in TV copy refers to Fusion, which leads this razor system market in total cartridge and razor sales. Gillette further submits that the qualification "leading blades" uses plain, unambiguous language to avoid any suggestion that all of ProGlide's blades are thinner—a takeaway that is not shown to be present or even material to the purchase decision as men are receiving the incredible and incredibly comfortable shave they expect from Gillette's most advanced system. Though Gillette respectfully disagrees that its supported performance claims are not already properly qualified, Gillette thanks the NAD for its considered review of this matter. As a strong supporter of the

⁶ While NAD understands that in the normal course of shaving, cutting force will diminish based on the blade tip become more dull due to repeated use, for the purposes of this test, the use of pristine samples is important to ensure the uniformity of the testing conditions of the samples.

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self-regulatory process, Gillette will reflect NAD's recommendations in future ProGlide advertising. (**#5299 AMU, closed 03/04/2011**)

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