Decision of the ADVERTISING REGULATORY BOARD

Complainant	Procter & Gamble South Africa
Advertiser	Johnson & Johnson (Pty) Ltd
Consumer/Competitor	Competitor
File reference	4007 – Kenvue – Procter & Gamble
Outcome	Upheld
Date	7 August 2025

The Directorate of the Advertising Regulatory Board has been called upon to consider a competitor complaint against online advertising promoting the Advertiser's Sinutab nasal spray. The advertising appeared on https://www.youtube.com/watch?v=mK7rs36_XjU and https://www.youtube.com/watch?v=Ph4gCs6hGcQ.

Description of the advertising

Both versions of the commercial feature the following logo sprawled across the upper right quadrant of the screen:

In one commercial, the voice-over also states “Sinutab. Number one decongestant nasal spray.”

Complaint

The Complainant submitted that third-party market data sourced from IQVIA (covering sales in South Africa from October 2023 through September 2024) indicates that its product (Iliadin) has sold more in both volume and value over this period.

It also noted that there is a disclaimer on the screen, but that this is simply too small to be of any value to any viewer. Attempts to resolve this directly with the Advertiser have failed, which is why it has brought this dispute to the ARB.

Response

The Advertiser submitted that the claim refers to SKU level sales, and not entire group category or brand family. This is exactly what is required in terms of the Marketing Code Authority guidelines, which pertinently state that “Sales claims must be based on volume of sales and must be supported by evidence. It specifically noted that:

> “The claim is substantiated by IQVIA TPM Data for South Africa, Specifically:
> **Market:** South Africa
> **Source:** IQVIA TPM, ATC4 R1A7 – Nasal Decongestants
> **Period:** MAT November 2023
> **Metric:** Unit sales by individual SKU.”

It argued that this data shows that Sinutab Nasal Spray 0,1% 10ml was the top-selling SKU in the nasal decongestant category, with 1 056 034 units sold, whereas the Advertiser’s Iliadin Adult MD Spray 0,05% 10ml sold only 798 825 units.

The Advertiser explained that this analysis was done internally by it, and is supported by a formal data disclosure letter from IQVIA dated 7 February 2024. It also provided a table purported to illustrate “IQVIA TPM MAT May 2025 Unit Sales”, which it claims shows that its Sinutab Nasal Spray 0,1% 10ml spray remains the top-selling individual SKU in the nasal decongestant category for 2025. It emphasised that its superiority claim is based on the fact that its product leads in terms of actual units sold. The Complainant may dominate

in terms of value measured, but this is because its product is more expensive. This is an important distinction to note.

Dealing with its disclaimer, it submitted that the disclaimer complies with the Marketing Code Authority guidelines and the ARB Code in terms of clarity, legibility and proximity to the claim. However, it is open to add a note reading "Based on unit sales of individual SKU (Sinutab Nasal Spray 0.1% 10ML) in the Nasal Decongestant category, IQVIA TPM MAT Nov 2023".

Application of the Code of Advertising Practice

The Directorate considered the following provisions of the Code to be relevant:

- Clause 4.1 of Section II (Substantiation)
- Clause 4.2.1 of Section II (Misleading claims)
- Clause 4.2.7 of Section II (Truthful presentation)

Decision

Having considered all the material before it, the Directorate of the ARB issues the following finding.

At the outset, it should be noted that the sales figures quoted by the Advertiser (1 056 034 units of Sinutab and 798 825 units of Iliadin) do not appear anywhere in the substantiating documents it provided. It is therefore not entirely clear where these figures originate.

Be that as it may, the Directorate has reservations about the substantiation submitted by the Advertiser.

Dealing firstly with the question of whether this claim is appropriately substantiated, the Directorate draws attention to Clause 4.1 of Section II of the Code. This clause requires advertisers to hold (and produce when asked to) independent verification of any direct and implied claims made. It notes, *inter alia*, that (underlined for the purpose of emphasising important criteria):

- "Documentary evidence, whether in the form of survey data or any other documentation, must be up to date and current, and must have market relevance",

- "Documentary evidence, other than survey data, must emanate from or be evaluated by a person/entity, which is independent, credible, and an expert in the field to which the claims relate and be acceptable to the ARB".
- "Survey data submitted as documentary evidence must … emanate from a SAMRA Accredited Marketing Researcher or an entity acceptable to the Southern African Marketing Research Association, and … The accuracy of the claims based on the survey must be confirmed by a SAMRA Accredited Marketing Researcher or an entity acceptable to the Southern African Marketing Research Association."

There are a few concerns worth noting in relation to the Advertiser's substantiation:

Firstly, both parties to this dispute appear to rely on IQVIA to support their arguments. Neither party, however, has addressed the Directorate on the question of IQVIA's status as an independent and credible expert or SAMRA accredited marketing researcher for the purposes of substantiating their claimed superiority. It is, therefore, not immediately apparent on what basis (if any) the Directorate should accept IQVIA as an independent expert entity (or, for that matter, a SAMRA accredited entity) for the purposes of Clause 4.1 of Section II. However, the fact that both parties appear to accept them as an expert would weigh in their favour if this was the only issue with the substantiation.

From https://www.iqvia.com/locations/middle-east-and-africa/about-iqvia-mea it would appear that IQVIA "… provides tools and resources to enable clients to succeed in the competitive and changing environment with distinct regional nuances … help[s] clients improve performance and minimize marketplace risk through superior forecasting and trend analysis, real world evidence studies, and technology and commercial effectiveness solutions …" and provides "… market intelligence and consulting expertise [which] give you the critical facts you need at every step - from the earliest stages of research and development through product launch, product maturation, and patent expiration."

This seems to suggest that IQVIA can provide real-world data and trend analysis to help navigate a competitive marketplace. In this particular instance, it would appear that IQVIA was not acting as an expert entity to interpret data and confirm findings, but merely as provider of sales data.

Regardless of this, however, the Directorate also notes that the on-screen disclaimer, the Advertiser's response, and the letter from IQVIA indicates that the claim is based on an "… internal analysis by Johnson and Johnson (Pty) …" which negates an argument that the

claim is independently verified as accurate and representative of the underlying data. It would appear that the Advertiser has interpreted and extrapolated its own findings from this data, which runs contrary to the expectations of Clause 4.1 of Section II of the Code. The letter from IQVIA states, *inter alia*, that "IQVIA takes no responsibility for your claim" and that "Any analysis of the applicable IQVIA data is independently arrived at by You on the basis of such data …"

It would appear that, other than the Advertiser's say-so, no independent and credible entity (or market researcher) has studied the data and reached the same conclusion as the Advertiser has done, or is willing to commit itself to such a conclusion.

In addition, it is noted that the "internal analysis" appears to have been conducted on data that was gathered during 2023. IQVIA's letter is dated 7 February 2024, and it references November 2023. In the absence of any argument to show that market data from 2023 can still be considered "up to date" and considered to have "market relevance" in 2025, the Directorate cannot simply assume that this is the case.

The claim made is "#1 SELLING DECONGESTANT NASAL SPRAY" and (by the voice-over) "Number one Decongestant nasal spray". While the Directorate accepts that unit sales rather than sales value is a valid basis of measuring the data, the Advertiser appears to be communicating a very narrow advantage as a broad claim.

The data submitted by the Advertiser reflects sales data for all competing products. If one were to calculate the total number of sales for (by way of example) all Iliadin sprays appearing in this table (which is manufactured by the Complainant), the total number of units sold for Iliadin branded products would surpass the number of sales attributed to Sinutab branded products by a considerable margin. However, on a product-by-product basis, the table appears to show that, in 2023, Sinutab 10 ml nasal spray as a single product has sold more units as a single product than any other nasal spray, counted as a single product.

The Directorate is of the opinion that the hypothetical reasonable consumer would understand the claim to mean that Sinutab Nasal Spray is the market leader in the nasal spray category. This is what is communicated by the commercial, which refers broadly to "nasal spray" and "number one selling nasal spray". The commercial does not say, "Sinutab **10ml** is the bestselling nasal spray", which appears to be the advantage on which they rely. It does not even visibly feature the 10ml product. Even the Advertiser has stated,

"Whilst you are correct that the IQVIA data shows that Iliadin is the market leader in the decongestant (nasal spray) category in South Africa, our claim does not relate to the category but rather the individual SKU, namely: Sinutab Nasal Spray".

If the Directorate sets aside its concerns with the timing of the data, and the fact that the independent expert has not confirmed the claim in question, it accepts that the data does appear to show some sort of "win" on the part of the Advertiser, in that the 10ml product sold the most individual SKUs. However, the communication in the commercial goes beyond this advantage, and communicates a product category leadership that is not supported by the data.

Accordingly, the Directorate is not convinced that the claim "#1 SELLING DECONGESTANT NASAL SPRAY" and / or "Sinutab. Number one decongestant nasal spray" is substantiated within the meaning of Clause 4.1 of Section II of the Code at this time.

The Directorate notes that the Advertiser appears to rely heavily on the fact that its claim is disclaimed by a disclaimer, which it submits "... complies with the relevant requirements of the MCA Code and the ARB guidelines, particularly in terms of clarity, legibility, and proximity to the claim ..."

Clause 4.2.7 of Section II of the Code reads as follows:

> "Where material information is superimposed on screen, the print must be clearly visible and remain on screen long enough to be easily read by the hypothetical reasonable viewer."

The Complainant argued that the disclaimer served no purpose, as it is too small to be legible or helpful. The Advertiser disputed this, but noted that it was willing to amend its disclaimer to add more content or clarity.

Having considered the commercials, the Directorate agrees that there is no likelihood that any reasonable viewer would be able to read the disclaimer or relate it to any of the claims made. It appears in minute font at the bottom of the screen, for less than a second in the shorter 5-second commercial, and no more than 3 seconds in the longer 20-second commercial. It is verbose and adds no clarity to anything stated on-screen or in the voice-over.

Purely to illustrate this point, the below example is included:

According to the Advertiser, this disclaimer reads:

> "*Based on internal analysis by Johnson & Johnson (Pty) Ltd using data from the following source: IQVIA TPM, South Africa; MAT November 2023; ATC4 R1A7 – Nasal Decongestants measured in Units by pack, reflecting estimates of real-world activity. Copyright IQVIA. All rights reserved. S1 SINUTAB NASAL SPRAY. Each 1ml solution contains 1mg XYLOMETAZOLINE HYDROCHLORIDE (0.1% w/v). Reg No P/16.1/184. For prescribing information, refer to the Professional Information approved by the Medicines Regulatory Authority. REFERENCES: 1. R Eccles, M Eriksson, S Garreffa, Shirley C. Chen, 2008, The nasal decongestant effect of xylometazoline in the common cold, American Journal of Rhinology, Vol. 22, No.5, 2008, page 493. ®Trademark © Johnson & Johnson (Pty) Ltd 2004. Consumer Care Contact Centre: www.kenvuecontact.eu ZA-SI-2400000."

Even if a consumer were able to read this disclaimer (which is extremely unlikely), it provides no useful clarity, as consumers would not know what to make of the terminology or how to apply it to the superiority claim being made. At best, it would clarify that the claim is based on data that is nearly two years old and constitutes the Advertiser's own conclusion, which is "… reflecting estimates of real-world activity …" rather than having

been independently verified. Most importantly, it makes no reference to the 10ml SKU limitation.

As such, the Directorate believes that the material information contained in this disclaimer, which is meant to provide clarity regarding the Advertiser's claimed superiority, is not clearly visible, and does not remain on-screen long enough to be easily read by viewers. The disclaimer is, therefore, found to contravene Clause 4.2.7 of Section II of the Code.

Sanction

The Advertiser is requested to withdraw or amend the claims "#1 SELLING DECONGESTANT NASAL SPRAY" and "Sinutab. Number one nasal decongestant spray" in their current format from all media in which it is made. This withdrawal should be actioned with immediate effect, and within the deadlines stipulated in Clause 15.3 of the Procedural Guide of the Code.

ARB members are also requested not to accept advertising containing these claims in their current format until such time as appropriate substantiation has been submitted and accepted by means of a new ARB ruling as per Clause 4.1.7 of Section II of the Code.