

**MOM BRANDS COMPANY**

**Malt-O-Meal Brand Cereals**

Challenger: Post Foods, LLC

Product Type: Food/Beverage

Issues: Preference Claims

Disposition: Substantiated In Part/Modified-Discontinued In Part

- **Taste superiority claims should be supported by taste tests that sample consumers who customarily use the products being compared.**

**Basis of Inquiry:** Claims made on product packaging and in point-of-sale, Internet, and television advertisements by MOM Brands Company (“the advertiser”) for its Malt-O-Meal brand cereals were challenged by Post Foods, LLC (“the challenger”), maker of competing cereals. The following are representative of the claims that served as the basis for NAD’s inquiry:

Express Claims:

“MOM Oat Blenders with Honey & Almonds Preferred Over Post Honey Bunches of Oats with Almonds!”

“National Taste Test WINNER Fruity Dyno-Bites preferred over Post Fruity Pebbles.”

“National Taste Test WINNER Cocoa Dyno-Bites preferred over Post Cocoa Pebbles.”

“MOM Honey Buzzers Preferred over Post Honeycomb.”

“Cocoa Dyno-Bites – 50% More Compared to Cocoa Pebbles cereal 15 oz. box.”

“Fruity Dyno-Bites – 50% More Compared to Cocoa Pebbles cereal 15 oz. box.”

“Malt-O-Meal Dyno-Bites Cereal Preferred Over Post Pebbles Cereal.”

**Challenger’s Position:**

I. The Advertiser’s Taste Preference Claims Are Not Substantiated

The challenger asserted that the advertiser’s taste preference claims for four of its breakfast cereals made on product packaging and in point-of-purchase displays, television commercials, and Internet advertising, were unsupported. Specifically, the challenger took issue with the advertiser claims that its products are “National Taste Test Winners” or “preferred” over comparable Post cereals,<sup>1</sup> and that “[i]n a national taste test, Malt-O-Meal Dyno-Bites are preferred over Post Pebbles Cereal.”

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<sup>1</sup> On product packaging the claims state, “MOM Brands Oat Blenders with Honey & Almonds are preferred over Post Honey Bunches of Oats with Almonds,” “MOM Brands Fruity Dyno-Bites are preferred over Post Fruity Pebbles,” “MOM Brands Cocoa Dyno-Bites are preferred over Post Cocoa Pebbles,” and “MOM Brands Honey Buzzers are preferred over Post Honeycomb.”

A. The Advertiser's Taste Tests Are Fatally Flawed

The challenger contended that the advertiser's taste test failed to meet industry standards for taste superiority claim substantiation, as set forth in the American Society for Testing and Materials' (ASTM) Guide for Sensory Claim Substantiation.<sup>2</sup> Pursuant to ASTM requirements well-conducted taste tests must include at least required six criteria: double blinding; use of paired comparisons; a geographically representative sample size; similarly purchased products; presentation of the tested products in substantially the same manner; and allowance for cleansing of the palate before tasting each product. According to the challenger, the advertiser failed to meet these criteria.

The challenger asserted that taste test populations must accurately reflect the demographics of those who consume the product. According to the challenger, consumers under the age of 35 comprise of a very high percentage of the consumers who eat its cereals. In fact, this demographic makes up 72% of Cocoa Pebbles consumers, 82% of Fruity Pebbles consumers, 70% of Honeycomb consumers, and 38% of Honey Bunches of Oats consumers. The universe of consumers in advertiser's taste testing, however, was limited to men and women between the ages of 30 and 64, thereby failing to include the proper universe of consumers and, in fact, excluding a very large portion of sweetened breakfast cereal consumers. This fatal flaw alone, the challenger argued, renders the advertiser's taste test and its results insufficiently reliable to support its taste preference claims.<sup>3</sup>

The challenger also asserted that the advertiser's taste test failed to follow ASTM guidelines in regards to the geographical diversity of its sample population. ASTM suggests that nationwide taste tests be conducted in at least two markets in each of the four major census regions, to provide for a geographically representative sample throughout the country. The advertiser, however, only tested in one market in the Northeast region for each taste test.

The challenger further argued that the advertiser failed to demonstrate that the products tested were of comparable and typical age. It explained that proper protocol provides for inspection and reporting of the freshness dates on all the products purchased for a taste test, and assurance that they are of similar freshness. Because breakfast cereal has a long shelf life, the challenger contended that merely ensuring that the tested products had not "expired" could result in the tested products having noticeably different freshness levels.

The challenger maintained that the advertiser's taste test methodology was further flawed by its failure to include a "no preference" option in its preference question. The challenger argued that the advertiser's wording of the question, "Which of the cereal samples do you prefer?" without an express "no preference" option, failed to afford respondents the opportunity to express that they had no preference between the two products. Additionally, the challenger noted that the questionnaire failed to make clear whether it was self-administered or conducted via interview and failed to include proper palate cleansing procedure.

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<sup>2</sup> Citing ASTM Standard Guide for Sensory Claim Substantiation E1958-12.

<sup>3</sup> In addition, the challenger presented the results of its 2012 category appraisal of the chocolate cereal market, which demonstrated that children ages 8 to 12 preferred Cocoa Pebbles over Cocoa Dyno-Bites.

The challenger also criticized the design of the taste test comparing Oat Blenders with Honey and Almonds and Post Honey Bunches of Oats with Almonds. That preference taste test was immediately preceded by a separate parity taste test between Oat Blenders with Honey (*without almonds*) and Post Honey Bunches of Oats Honey Roasted (also *without almonds*). The challenger contended that the parity question regarding the cereals *without almonds* could bias the preference results for the cereals *with almonds*.

Finally, the challenger noted that its Cocoa Pebbles cereal is undergoing a product reformulation, which will change the taste of Cocoa Pebbles as of October 2014. The challenger asserted that, even if found to be properly conducted, the advertiser's taste test which included the prior formulation of Cocoa Pebbles is no longer relevant.

#### B. The Advertiser's Taste Tests Cannot Support a Line Claim

The challenger asserted that the challenged commercial conveys an unsupported line claim. At the end of the advertisement, the voiceover states, "In a national taste test, Malt-O-Meal Dyno-Bites are preferred over Post Pebbles Cereal." While the voiceover makes this claim, images of the advertiser's Fruity Dyno-Bites and Cocoa Dyno-Bites appear on screen with "Taste Test Winner" ribbons next to images of Post Fruity Pebbles and Post Cocoa Pebbles. The text "Malt-O-Meal Dyno-Bites Cereal Preferred over Post Pebbles Cereal" appears at the bottom of the screen. Noting that it has several different types of Pebbles cereals that were not tested by the advertiser, including Cocoa Pebbles Xtreme, Summer Berry Pebbles, and Poppin Pebbles, the challenger asserted that the advertiser's testing, even if reliable (which the challenger asserted it is not), cannot support a line claim.

The challenger argued that in order to make a line claim, the taste preference claimed must be shown for all of the products in the parties' product lines. Alternatively, in order to avoid conveying an unsupported line claim, an advertiser must expressly state the exact basis of the comparison in the claim itself. The challenger contended that, even if the advertiser's taste tests were found to support more limited taste superiority claims, the advertiser did not show that its cereals have taste superiority over the entire line of Post Pebbles cereals. Accordingly, it argued that the broad line claim, "In a national taste test, Malt-O-Meal Dyno-Bites are preferred over Post Pebbles Cereal," was unsubstantiated.

#### II. The Advertiser's Comparative Volume Claims Are Misleading

The challenger asserted that additional claims made on the advertiser's product packaging regarding volume comparisons between its cereals and Post cereals, though literally true, were nonetheless misleading. On the advertiser's 22.5 oz. bags of Cocoa Dyno-Bites cereals, it claims in large print, "50% more." Below this claim, in smaller print appear the words, "Compared to Cocoa Pebbles cereal 15 oz. box." Similar claims are made for the advertiser's Fruity Dyno-Bites cereal. The challenger maintained that, though the claims are factually correct, they are nonetheless misleading because they convey the false implied message that Post does not offer a larger (and more comparably sized) product. The challenger stated that it sells a 40 oz. sized bag

of both Fruity and Cocoa Pebbles, which, it argued, is a more appropriate product for comparison. It was the challenger's position that if the advertiser is going to make an apples-to-oranges volume comparison between the products, it must ensure that the claim does not communicate the false message that there is not a more comparable competing product to which it can make a comparison.<sup>4</sup>

The challenger rejected the advertiser's assertion that the comparison is between the most similar products made by the two parties because the cereals referenced had similar flavor profiles, (e.g., Fruity Dyno-Bites being compared to Fruity Pebbles.) The challenger maintained that the advertiser did not compare the most similar products because it compared widely variant product sizes (i.e., 15 ounce box versus 22.5 ounce bag) when more appropriate (and more similar) product sizes were available. As such, the challenger argued, the size comparison claims convey the false message that the advertiser provides consumers more cereal per container than the challenger, when that is not the case.

### **Advertiser's Position:**

#### **I. The Advertiser's Superior Taste Preference Claims Are Supported By Reliable National Taste Tests**

The advertiser contended that its taste preference claims are properly based on statistically significant national taste test results. The advertiser hired an independent and well-respected third-party expert to conduct national consumer taste tests comparing a number of its cereals to similar cereals produced by the challenger. The research consisted of mall intercept techniques performed across the country, in ten cities, across all four census regions, and met all ASTM criteria<sup>5</sup>

The advertiser stated that the test results demonstrated, to a 99% confidence level, that its Malt-O-Meal Brand Cereals were preferred over comparable Post cereals. Specifically, of the 700 respondents, 56.3% preferred Oat Blenders with Honey & Almonds to Post Honey Bunches of Oats with Almonds. Of the 700 respondents in another test, 56.6% preferred MOM Brands Honey Buzzers over Post Honeycomb cereal. In the 700-respondent taste test of MOM Brands Fruity Dyno-Bites and Post Fruity Pebbles, 53.9% preferred Fruity Dyno-Bites and in the test between MOM Brands Cocoa Dyno-Bites and Post Cocoa Pebbles, 56.1% preferred Cocoa Dyno-Bites.<sup>6</sup>

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<sup>4</sup> Citing Conagra Foods, Inc. (Marie Callender's Frozen Three Meat and Four Cheese Lasagna), supra at n. 5. The challenger noted that, in that case, NAD found that Conagra's comparison of its lasagna to a Stouffer's product was misleading because Stouffer's offered a more comparable product than that used as the basis of the advertiser's comparison. The challenger argued that by not clarifying that the challenger offers a larger and more comparably sized bag of cereal, the advertiser's volume comparison is similarly misleading.

<sup>5</sup> The tests used double-blinding, paired comparisons, products that were presented in substantially the same manner, and a protocol that included palate cleansing before tasting each product.

<sup>6</sup> The advertiser explained that the test administrator came to these conclusions by removing those who responded "I have no preference." Those responses amounted to less than 20% in all of the taste tests. It also noted that using the methodology in ASTM E1958-12 Section 13.2.1, which splits "no preference" respondents equally between the two

A. The Taste Tests Are Reliable

The advertiser noted that the challenger did not dispute that it conducted a sufficiently large-scale taste tests, and that the results showed sufficiently statistically significant support a taste preference claim. Rather, explained the advertiser, the challenger limited its criticism to various aspects of the test protocols as differing from ASTM guidance. The advertiser asserted that ASTM guidance is not a single set of exact protocols but rather general guidelines that do not require strict adherence.<sup>7</sup> The advertiser contended that its taste tests are reasonable in view of the ASTM guidance and common sense, and fully substantiate its claims.

In response to the challenger's criticism that it used an improper universe of participants, the advertiser argued that its test properly encompassed the group targeted by its advertising—purchasers of its products. It noted that Oat Blenders with Honey & Almonds is an adult cereal intended for purchasers between 30 and 64 years of age and that its advertisements for its Honey Buzzers, Fruity Dyno-Bites, and Cocoa Dyno-Bites are targeted to adults who purchase these products for consumption by the whole family. The advertiser argued that its taste preference claims are intended for adult purchasers—not children—and, therefore, its universe of test participants was properly limited to that population.

The advertiser stated that the taste tests were conducted nationwide and argued that each census region was reasonably represented. Although there was only one test location in the Northeast region for each taste test, the advertiser stated that the distribution reasonably reflected the lower distribution of its products in that area. The advertiser explained that its products have lower distribution in the Northeast region and that the use of only one location in that area corresponds with the advertising and product distribution for its products. In any event, the challenger noted that the taste test results in the Northeast test centers showed preferences that were consistent with (if not stronger than) other locations. Accordingly, the results would not have differed if additional taste locations in the Northeast were used.

Contrary to the challenger's contention, the advertiser stated that the taste test participants were explicitly presented with a “no preference” option. The question asked “Which of the cereal samples do you prefer?” and provided for three possible responses, all which were visible to the subjects on their written questionnaires: “I prefer cereal [3-digit code];” “I prefer cereal [other 3-digit code];” and “I have no preference.” Accordingly, it was unnecessary to also place the words “no preference” in the question itself. Additionally, contrary to the challenger's assertion, the taste test incorporated proper palate cleansing.

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products, the MOM Brand cereals still have favorable results, to a 99% confidence level. Specifically, using this statistical calculation, Malt-O-Meal Oat Blenders with Honey & Almonds was preferred by 55.43% of respondents over Post Honey Bunches of Oats with Almonds, 55.71% of respondents preferred Malt-O-Meal Honey Buzzers to Post Honeycomb, 53.57% preferred Malt-O-Meal Fruity Dyno-Bites to Post Fruity Pebbles, and 55.43% preferred Malt-O-Meal Cocoa Dyno-Bites to Post Cocoa Pebbles.

<sup>7</sup> Citing ASTM Standard Guide for Sensory Claim Substantiation E1958-12, at p. 1.

The advertiser argued that the additional criticisms levied by the challenger were similarly unavailing. It contended that its parity taste test between Oat Blenders with Honey (*without almonds*) and the challenger's Honey Bunches of Oats Honey Roasted (also *without almonds*), which was conducted in conjunction with its preference taste test between the parties oat and honey cereals *with almonds*, was for a completely different product pair and was not the basis for any of the claims challenged here. The products in each test were presented to the test subjects separately and there was only one substantive taste question for each set of cereals. The advertiser argued that the parity question for the "*without almonds*" cereals would not have impacted the taste preference question for the "*with almonds*" cereals presented separately to test subjects.

The advertiser also dismissed the challenger's assessment of its tests' cereal freshness protocols, noting that all of the tested products were purchased within the freshness dates from retailers near the test sites. The advertiser asserted that it was not required to record or match product packaging freshness dates any further, and that the purchasing of the cereals closely reflected the local marketplace and normal consumer experience. As for its use of a self-administered questionnaire for a portion of the test, the advertiser stated that this was consistent with ASTM guidance. The questions were few and simple so there was no need for the questions to be administered by the individual conducting the test. Lastly, the advertiser argued that the challenger's reformulation of its Cocoa Pebbles product is irrelevant because the product was not yet available in the marketplace at the time of the taste test or at the time of the initiation of the instant challenge.

#### B. Consumers Will Not Understand the Claims To Refer To Products Not Tested

The advertiser contended that, in the context in which it appears, the claim, "In a national taste test, Malt-O-Meal Dyno-Bites are preferred over Post Pebbles Cereal," is not a line claim. The advertiser pointed out that the television commercial depicts two competing product pairs on the screen (Fruity Dyno-Bites and Fruity Pebbles, as well as Cocoa Dyno-Bites and Cocoa Pebbles) such that consumers will reasonably understand that the taste test/preference claim pertains solely to the depicted products and not additional, unseen product varieties. Indeed, the advertiser stated that it does not make products that directly compete with the challenger's other Pebbles cereals, such as Pebbles Xtreme, Poppin Pebbles, and Summer Berry Pebbles and, as such, consumers could not take away the message that the claim relates to products that are not directly comparable to products made by the advertiser. The advertiser argued that the taste preference claims for the actual comparable products being referenced are substantiated.

#### II. The Advertiser's Size Comparison Claims Are Factually True and Not Misleading

The advertiser argued that the size comparison claims on its product packaging conveys truthful and relevant information that is useful to consumers. According to the advertiser, the phrases, "Cocoa Dyno-Bites [contain] 50% more [cereal] Compared to Cocoa Pebbles cereal 15 oz. box" and "Fruity Dyno-Bites [contain] 50% more [cereal] Compared to Fruity Pebbles cereal 15 oz. box," are mathematically accurate. Although the challenger maintained that its 40 oz. product is more similar to the advertiser's 22.5 oz. bag, the advertiser countered that it also sells a 40 oz.

bag of cereal that directly competes with the challenger's 40 oz. product. Accordingly, the challenger asserted, the challenger's 40 oz. bag is not the appropriate size for comparison to its 22.5 oz. bags.

The advertiser further noted that the challenger's 40 oz. bag product is relatively new to the market, while its 15 oz. box is more widely available and is a more relevant point of comparison for consumers. The advertiser stated that it has been making its "50% more" claim for at least 11 years and argued that the comparison is reflective of the market realities—that the 15 oz. box and the 22.5 oz. bag are in direct competition for consumer attention and are a far more market relevant comparison than a comparison with the challenger's newer 40 oz. bag.

Insofar as the challenger argued that size comparisons would be valid if the advertising clearly indicates the exact products being compared and does not communicate the message that the competitor does not make a more similar product than the one its being compared to, the advertiser asserted that it has met this requirement. The advertiser stated that it clearly indicates on its product packaging that the size comparison is between the 15 oz. competitor product and the 22.5 oz. advertised product.<sup>8</sup>

## **Decision:**

### **I. The Taste Preference Claims**

NAD has established clear evidentiary standards for comparative taste claims. The best evidence to support taste preference claims is a double-blind taste test of comparative products and involves a geographically dispersed sample that reflects the population covered by the claim.<sup>9</sup> The taste test should include adequate protocols, including: (1) compare products with similar shelf life that were purchased in the test market; (2) prepare both products according to instructions; (3) present and test products in the same way; (4) require test subjects to cleanse their palate prior to tasting each product; and (5) produce statistically significant results.<sup>10</sup>

#### **A. The Advertiser's Taste Tests**

NAD acknowledged and appreciated that the advertiser sought to design its taste tests' protocols in accordance with NAD and NARB precedent.<sup>11</sup> The advertiser's test was conducted by an independent third party administrator, and used a simple paired-comparison of blinded cereals. Further, the test presented the parties' products along with an array of milk options (and no

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<sup>8</sup> The advertiser disputed the challenger's comparison to NAD's prior decision in ConAgra Foods, Inc. (Marie Callender's Frozen Three Meat and Four Cheese Lasagna), supra at n. 5. In that case, NAD noted that the different-sized products in the comparison "may be formulated differently to account for the most-preferred cooking method for each size." The advertiser noted that the issue was not the comparison of two different product sizes, *per se*, but the fact that a comparison to a more similar product could have been made. Here, the advertiser contended that the issue is simpler, that is, how much more cereal is in one package versus another package.

<sup>9</sup> Domino's Pizza, Inc. (Oven Baked Sandwiches), Report #5023, *NAD/CARU Case Reports* (May 2009).

<sup>10</sup> Id.

<sup>11</sup> Malt-O-Meal Company (Malt-O-Meal Cereals), Report #4556, *NAD/CARU Case Reports* (September 2006) and Malt-O-Meal Company (Malt-O-Meal Cereals), NARB Panel #140 (March 2007).

additional sweetener) so that participants would be able to fairly assess the products in a consumer relevant manner, and included opportunities for test subjects to cleanse their palate between products. The test also included a sufficiently large sample size to elicit statistically and consumer relevant results.

NAD was concerned, however, about the universe from which the advertiser drew its taste test subjects to support its “National Taste Test” claim. The ASTM Standard Guide for Sensory Claim Substantiation §5.2.8.2 makes clear that, “a national claim should be based on a sample representing major geographic regions . . . [a] minimum of two markets in each of the four regions should be included.”<sup>12</sup> The advertiser, however, only utilized one testing center in the Northeast census region, as opposed to two or more—a significant deviation from the industry standard. This affects the consumer relevance of the taste tests, as taste preferences can be significantly impacted by geographic variance.<sup>13</sup> While the advertiser may have less market penetration in the Northeast, its claim is that its products won a “National Taste Test.” This claim conveys a broad, strong message regarding the taste preferences of the overall population of sweetened breakfast cereal consumers. Additionally, although the advertiser may have less of a presence in the Northeast, that may not necessarily be true for the challenger’s products or mean that there is not a significant population of sweetened breakfast cereal consumers in that region.

NAD also found the advertiser’s selected age range of taste test subjects (ages 30 to 64), to be a problematic limitation on the taste tests’ sample population. NAD and NARB have held that, “taste tests should sample consumers who customarily *use* the products being compared.”<sup>14</sup> Here, the advertiser sampled from the population to whom it targets its marketing—adult purchasers of breakfast cereal—not from the population that necessarily uses the two products.

The record makes clear that sweetened breakfast cereal is consumed by people of all ages, and many are eaten primarily by children. The challenger noted that the majority of consumers of its Cocoa Pebbles, Fruity Pebbles and Honeycomb cereals (all of which served as the basis of comparison for the advertiser’s claims) are under 35, and that over 50% of consumers of its Honey Bunches of Oats with Almonds (the object of comparison for one taste superiority claim) are either under 35 or over 65—both age groups that were excluded from the advertiser’s taste tests’ sample population. NAD found that the advertiser’s “National Taste Test Winner” claims conveyed the message that the advertiser’s products were preferred over the challenger’s products amongst a representative sample of sweetened breakfast cereal users. Accordingly, by selecting a specific type of breakfast cereal *purchaser* for its taste test the advertiser excluded more than half of actual product *users* in the product category.

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<sup>12</sup> ASTM Standard Guide for Sensory Claim Substantiation §5.2.8.2

<sup>13</sup> §5.2.8.1 of the Standard Guide specifically notes that preference claims in particular have a potential for geographical and demographical dependencies.

<sup>14</sup> Ocean Spray Cranberries, Inc. (Ocean Spray Cranberry Juice), NARB Panel #179 (September 2012); see also Ocean Spray Cranberries, Inc. (Ocean Spray Cranberry Juice), Report #5453, *NAD/CARU Case Reports* (April 2012).



For these reasons, NAD determined that the advertiser's taste tests were insufficiently reliable to serve as a reasonable basis for its taste preference claims and recommended that these claims be discontinued.

Though largely moot at this juncture, NAD noted that that the advertiser's product procurement method, which sourced the cereals from local retailers and ensured that they were within the marked freshness dates, was reasonable because it closely hewed to how consumers would obtain the products in the real world. Likewise, NAD noted that the advertiser's questionnaire sufficiently presented a "no preference" option to subjects. The tests' preference questions were simply worded and understandable, and the answer options, including a "no preference" option, were clearly visible and understandable directly underneath. As for the parity question between Oat Blenders with Honey and Post Honey Bunches of Oats Honey Roasted that preceded the preference question about the parties' oat and honey cereals *with almonds*, NAD acknowledged that, given the close similarity between the cereals, the parity question could possibly bias the proceeding preference question.<sup>15</sup>

#### B. Whether the Advertiser's Commercial Conveys an Unsupported Line Claim

NAD's considers a number of factors when considering whether an advertisement conveys a line claim including references to general brands, the specific copy language, and whether the imagery used in the advertisement effectively limits the claim or serves to extend its applicability to an entire line of products.<sup>16</sup> NAD has noted that, "not all of these elements must be present and no one of the cited elements is dispositive of a line claim."<sup>17</sup>

NAD determined that, in the challenged commercial, the imagery accompanying the claim<sup>18</sup> of two of the advertiser's cereals (Fruity and Cocoa Dyno-Bites) versus two of the challenger's cereals (Fruity and Cocoa Pebbles), adequately served to limit the taste preference message conveyed to the cereals pictured, and concluded that in the context in which it is presented, a line claim was not conveyed.<sup>19</sup> Additionally, given that there are no MOM-Brand products that are directly comparable with Post Pebbles cereals other than Fruity and Cocoa Pebbles, NAD determined that it is unlikely that consumers would look past the imagery of the advertisement and reasonably take away the message that the object of the advertiser's taste preference claim included more specialized, seasonal, and/or somewhat dissimilar products that were neither mentioned nor depicted in the advertisement.

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<sup>15</sup> Regarding the advertiser's product reformulation for Cocoa Pebbles, NAD noted that the advertiser clearly could not have tested the reformulated product prior to its release. NAD also pointed out, however, that should the advertiser's taste superiority claim for Cocoa Dyno-Bites been found to be substantiated, NAD would have nonetheless recommended that it continually monitor the marketplace to ensure that its comparative claim remained consumer relevant and accurate.

<sup>16</sup> Campbell Soup Company (Prego Traditional Pasta Sauce), Report #5607, *NAD/CARU Case Reports* (June 2013).

<sup>17</sup> Id.

<sup>18</sup> "[i]n a national taste test, Malt-O-Meal Dyno-Bites are preferred over Post Pebbles Cereal",

<sup>19</sup> Campbell Soup Company (Prego Traditional Style Spaghetti Sauce), Report #3302, *NAD/CARU Case Reports* (June 1996) (finding that a line claim was not conveyed because the comparison was to the leading variety in the challenger's line of sauces and because the visual imagery of the commercial clearly showed which two individual products, from competing lines of products, were being compared.)

## II. The Comparative Package Size Claims

NAD determined that the comparative package size claims, “50% More,” were not misleading and fully substantiated. NAD noted that the advertiser’s 22.5 oz. bags of cereals are, by simple mathematics, 50% larger than the challenger’s 15 oz. cereal box size. NAD further observed that the claim “50% More” appears on the packaging for Fruity and Cocoa Dyno-Bites 22.5 oz. bags in large font. Directly underneath, in significantly smaller but still prominent font, appear the words, “Compared to Fruity [or Cocoa] Pebbles cereal 15 oz. box.” Thus the advertiser’s disclosure of the basis of its comparison was clear and in direct proximity to the main claim, such that consumers who see the “50% More” claim would be able to notice, read, and understand it.

NAD also found that the advertiser’s comparison of its 22.5 oz. bag to the challenger’s 15 oz. box did not reasonably convey the message that the challenger does not offer a larger package size. Both parties offer breakfast cereal in a variety of package sizes. The challenger’s 15 oz. box is its most prevalent product size and the most consumer relevant package to which the advertiser could compare its own 22.5 oz. package. Additionally, although breakfast cereal retail pricing regularly fluctuates, the compared product sizes are often similarly priced and are in direct competition for sweetened cereal customers. NAD was not persuaded by the challenger’s argument that its larger 40 oz. bagged product is a more equitable basis of comparison for the advertiser’s 22.5 oz. bagged cereal.<sup>20</sup> The record demonstrates that it is the advertiser’s own 40 oz. bag size that directly competes with the challengers 40 oz. bag of cereal—not its 22.5 oz. product.

### **Conclusion:**

NAD recommended that the advertiser discontinue its national taste preference claims, “Fruity Dyno-Bites preferred over Post Fruity Pebbles,” “Cocoa Dyno-Bites preferred over Post Cocoa Pebbles,” “MOM Oat Blenders with Honey & Almonds preferred over Post Honey Bunches of Oats with Almonds,” and “MOM Honey Buzzers Preferred over Post Honeycomb,” as well as its “National Taste Test WINNER” claims. However, NAD concluded that the advertiser provided a reasonable basis for its product volume comparison claims, “50% More – Compared to Cocoa [or Fruity] Pebbles cereal 15 oz. box” and that these claims did not reasonably convey the message that the challenger does not offer a larger sized version of the products.

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<sup>20</sup> NAD was not convinced by the challenger’s argument that the volume comparison claims in this case were akin to the comparative claims in ConAgra Foods, Inc. (Marie Callender’s Frozen Three Meat and Four Cheese Lasagna), supra at n.5. That case involved a taste preference claim between two products in competing lines of frozen lasagna. While NAD noted that the size differential of the compared product factored into whether or not the basis of comparison was the “most similar variety made by the competitor,” it did so because the product size affected how the products were typically prepared. Here, the claim is *about* the package size itself, not about consumer preferences.

**Advertiser's Statement:**

MOM Brands wishes to thank the NAD for allowing this matter to be addressed in this forum. Post raised many issues with our advertising, most of which were rejected by the NAD and demonstrates MOM Brands' commitment to responsible advertising. Although MOM Brands agrees with most of the NAD decisions, we are appealing the judgment on two issues that were raised. We believe these decisions are inconsistent with the principles of the ASTM Guide for Sensory Claim Substantiation, and would do a disservice to the advertising industry if the decision stood as a precedent.

The decision verified MOM Brands used proper sampling techniques, but raised issues with the age groups represented in the samples. We believe our use of adults was appropriate for buyers of all the products who primarily see the claim at the point of purchase. MOM Brands also believes the NAD decision would impose, among other things, a requirement to test on children even for a product normally purchased and consumed by adults. Moreover, MOM Brands believes the NAD's concern over the age groups is based on unsupported assertions by Post. Indeed, it appears the NAD accepted Post's claims regarding the relevant ages based on survey information which, unlike MOM Brands' surveys, deviates significantly from ASTM principles.

NAD also verified that MOM brands exceeded the required number of taste test locations, exceeded the required number of consumers tested, and had representation in all required geographic regions. The NAD felt the regions tested needed to be equally balanced. MOM Brands is appealing this decision. We tested in ten distinct geographic locations in proportion to where the products are sold, and since the claims in question are made on the package, or on local television broadcast only where the products are sold, that testing method was completely appropriate and matched the testing locations to where its claim would be seen. Despite these appeals, MOM Brands appreciates and wishes to thank NAD for providing this service to the advertising community. **(#5782 HH, closed 11/05/2014)**