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ASA Files: Denigrating Competitors 'Isn't A Good Look' For Advertisers

by [David Ridley](#)

Bayer Consumer Health and its effervescent vitamin brand Berocca were subjects of denigratory remarks by an online competitor in a recent UK advertising complaint ruling. The ASA's Freddie Alcock talks HBW Insight through the complaint, explaining in this exclusive interview why denigration is never a good look for advertisers.

Online supplements firm Tonic Nutrition has fallen foul of UK advertising rules by using its website to discredit competitor Bayer Consumer Health and its effervescent multivitamin brand Berocca.

Urging consumers to “dump the junk” alongside a table comparing its own Daily Immunity product with Bayer's Berocca, Tonic Nutrition crossed the line from healthy competition to denigration, the Advertising Standards Authority concluded, in a recently published ruling.

“When it comes to food, it's really important that advertisers get their claims right, because there are all sorts of nuances within those rules and reasons why those rules are actually there,” advised ASA investigations executive Freddie Alcock. “They are there to protect consumers, and to ensure they're not misled.”

“Denigration follows the same logic, with the added fact that it's also there to make sure it's a level playing field for advertisers, because obviously you can't go around just making false claims about your competitors,” Alcock told HBW Insight. “Ultimately, it's not a good look for Tonic Nutrition to have a denigration ruling out there.”

'High In Vitamins'

[The ruling in question](#) concerned a November 2023 Tonic Nutrition website listing for its Daily

Immunity supplement, which featured a table comparing the product with various competitor products including Bayer's Berocca.

The table, which claimed that Tonic's Daily Immunity product contained a total of 3,433 mg vitamins, minerals and other ingredients – a total amount that Tonic said “out-vitamed” the competition – was accompanied by text stating: “Dump the Junk. Dump the sugars, chemicals and fillers. It's a simple solution to make you feel you.”

Bayer complained that the table and accompanying text implied nutrition and comparative nutrition claims that breached the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code), and that the phrase “dump the junk” specifically “discredited or denigrated” Berocca.

The ASA agreed on both counts, noting in the first instance that consumers would understand the 3,433 mg total vitamins claim to mean that the Daily Immunity product was high in a range of vitamins.

“Notwithstanding that the claim was misleading because the stated amount included substances that were not vitamins, for example, reishi mushrooms, we noted there was no authorized generalized ‘high in vitamins’ nutrition claim on the Great Britain nutrition and health claims (NHC) register,” ASA explained.

This aspect of the ruling was “pretty clear cut,” Alcock noted. However, the ruling should serve as a “useful example,” he said, for food industry advertisers to “make sure that when they do make these types of claims, they are authorized claims that they're allowed to make.”

‘Dump The Junk’

By urging website visitors to “dump the junk,” the ASA considered that Tonic was implying that its Daily Immunity product was “of a higher quality due to it having a higher vitamin content and being without the ‘sugars, chemicals and fillers’ of the competitor products, and that accordingly consumers should avoid those competitor products.”

Aside from the fact that the “dump the sugars” claim misrepresented Berocca's actual nutritional content – Berocca contains sweeteners rather than sugars – the ASA considered the term “junk” in this context to be a “pejorative comment which suggested consumers should avoid purchasing Berocca or the other competitor products as they were of little to no value as supplements.”

“We considered that those comments went beyond a factual and informative comparison about the relative nutritional value of the products,” the ASA said. “For those reasons, we considered denigrated or discredited another product.”

‘Bad Boys Berocca’

As well as implying that Bayer’s Berocca was “junk,” Tonic had also in a subsequent Instagram video claimed that Bayer “don’t want to look after your health like we do.”

The Instagram reel posted on Tonic Health’s Instagram page featured a video of a man standing next to Berocca products on a supermarket shelf saying: “Big pharma are coming for us, check this out, the bad boys Berocca sent an official complaint to the ASA because they don’t like the fact that we’re telling you what’s in their product and what the facts are for what’s healthy.”

Alcock clarified that the Instagram reel had been posted after the original investigation into the claims made by Tonic on its website had begun.

“We sent out all the relevant correspondence to the advertiser and to the complainant, and then the advertiser, Tonic Nutrition, decided to publish that Instagram video while the investigation was going on,” he explained.

The ASA considered that these comments, which were “unverified and implied negative motivations by Bayer,” also “went beyond a factual and informative comparison about the relative nutritional value of the products and were denigratory.”

‘Reverse Burden Of Proof’

Asked by HBW Insight where the line between competition and denigration lies, Alcock said it is an “interesting question.”

“There’s a degree of subjectivity in all of our rulings,” he noted. “But essentially, we operate what we call a ‘reverse burden of proof’ methodology, which means that, if an advertiser is making a claim, it’s on them to substantiate it with objective and factual information. And if they can’t do that, and if they stray into territory which we perceive as making negative or slanderous claims about another advertiser, then it’s likely to be denigration territory.”

“We want there to be healthy competition between advertisers,” he continued. “But when a company has denigrated a competitor without being able to back up its claims with any hard evidence, then it’s important that that claim is taken down, amended or removed.”

In general, Alcock said that denigration cases are rare. “The vast majority of advertisers follow the rules. They want to get their ads right. They abide by the CAP and UK Code of Broadcast Advertising (BCAP) codes. They don’t want to mislead consumers and they don’t want to denigrate other companies.”

Consequences?

The ASA ruling stated that the ads must not appear again in the form complained of. “We told Tonic Nutrition t/a Tonic Health to ensure that they did not make nutrition or comparative nutrition claims unless they were authorized on the GB Register,” the ASA concluded. “We also told them to ensure they did not discredit or denigrate [Bayer AG](#)’s or their other competitors’ products.”

In the case of such a serious offence as denigration, such a punishment may seem light. However, a negative ASA ruling is “bad press” for offending companies, Alcock noted. “Often these companies have shareholders and they don't want them to have their ads banned.”

Asked what happens if an advertiser refuses to comply, Alcock said that the ASA has recourse to a number of additional steps, from working with social media companies to take down offending ads to calling in local Trading Standards offices or the UK Medicines and Healthcare products Regulatory Agency, which have their own legal powers.

However, such cases are “really, really rare,” Alcock insisted. “Luckily, most companies do follow the rules. For us, this a big plus, especially with regards to nuanced areas like foods where consumers might not necessarily know all the rules.”

Free Advice

Alcock stressed that this ruling provides a “really good lesson” for advertisers working in the food industry.

“Make sure you know what the rules are, familiarize yourself with the CAP code and make sure you know what nutrition and health claims you can make, and which ones you can't make,” he advised.

“If you're not sure about what you can and can't say, head to the ASA website,” he continued. “There's lots of great advice and resources there. We regularly publish updated guidance on these exact type of issues.”

The ASA also has its own copy advice service for advertisers, which is free of charge, Alcock added. “Companies are always welcome to get in touch and ask. Our team likes to help and advise on how to get advertising right.”