

NAD Decision Provides Guidance on #1 Claims

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February 17, 2026

Nanit sells a smart baby monitor, a WiFi-connected device with a video and audio feed that can track a baby's breathing motion, sleep patterns, and milestones. Nanit advertised that its monitor was the "#1 baby monitor" and the "#1 smart baby monitor." Owlet, a competitor, challenged the claims before NAD, arguing that it has higher market share than Nanit in both categories.

At the outset, NAD noted that an unqualified "#1" claim like the ones challenged communicates a message that a "product has the highest number of units sold for a product within a particular category in the market." It doesn't look like either company disputed that requirement. Instead, the main dispute between the companies centered around how the "baby monitor" market should be defined.

Owlet sells the Dream Sock, a device parents can put on a baby to monitor metrics such as heart rate and oxygen levels. Nanit didn't include the Dream Sock in its sales calculations, arguing that the product is distinguishable from conventional baby monitors for a number of reasons, including that it doesn't have a video feed. Owlet only considered video baby monitors priced \$99 or higher.

NAD precedent provides that "a class of products should be defined consistent with consumers' reasonable understanding." NAD determined that various baby products are marketed as "monitors," even though they don't have video components. Likewise, the "smart baby monitor" category is broad and includes products with a variety of features. Thus, the Owlet Dream Sock may be characterized as a "smart" monitor.

NAD determined that products such as Owlet's Dream Sock should be included in a calculation of the best-selling "baby monitor" or "smart baby monitor" when a claim is not specifically limited to video monitors. Therefore, NAD recommended that Nanit stop making its claims. (It's possible that Nanit could have made a "#1 video baby monitor" claim or a "#1 smart video baby monitor" claim.)

When making a #1 claim, it's important to ensure you can substantiate that you have the highest number of units sold for a product within a particular category in the market. It's also important to ensure that how you define the category matches how consumers understand the category. Click [here](#) for another NAD decision that cautions advertisers against getting too creative with how they do that.