

NAD Deflates Disparaging Claims

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Tempur-Pedic ran ads on social media asking viewers whether they want a mattress “that inflates and deflates like a balloon. Because that’s how a Sleep Number mattress works. When you select your Sleep Number, you’re adding or removing air, which basically makes it an air mattress.” The ads show a Sleep Number mattress deflating and end with a pitch about why Tempur-Pedic mattresses are better.

Sleep Number wasn’t going to take that lying down, and the company filed an NAD challenge alleging that the videos convey a false and disparaging message about the quality and functionality of their mattresses. Tempur-Pedic argued that because Sleep Number mattresses do actually inflate and deflate using air, describing them as “basically an air mattress” is truthful and not misleading.

NAD started with the premise that although a competitor is free to highlight the differences between its product and a competitor’s products and to make claims that may be perceived as denigrating, NAD will carefully scrutinize those claims “to ensure that they are truthful, accurate, narrowly drawn, and that they do not falsely disparage a competitor’s product.”

Although a Sleep Number mattress does inflate and deflate using air, NAD determined that the statement that it’s “basically an air mattress” is likely to conjure up images of “the kind of portable mattress that is used temporarily.” Viewers were likely to conclude that Sleep Number mattresses are of “poor quality” and “uncomfortable.” Accordingly, NAD recommended that Tempur-Pedic stop running the videos.

Keep in mind that ads can be found to be misleading, even if the claims are literally true. You need to be particularly careful if your ad suggests that a competitor’s product is worse than it actually is.