

# NAD Opines on “Favorite” Claims

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The line between what’s an objective claim (which does require proof) and puffery (which does not require proof) isn’t always clear, and reasonable minds can differ as to on which side of the line a claim belongs. When the Eighth Circuit held in 2004 that “America’s Favorite Pasta” was puffery, many people were surprised and wondered how the NAD would have decided that case. Now, in a case involving Goya’s “Puerto Rico’s favorite pasta” tagline, we have an idea.



Goya advertises that its Excelsior brand pasta is “*La Pasta Favorita de Puerto Rico.*” In some cases, that tagline is accompanied by other superlatives, such as statements that the pasta is “delicious” and the “best for your family.” A competitor challenged these claims at the NAD, demanding that Goya provide substantiation. Pointing to the Eighth Circuit case, Goya argued that its claims were merely puffery and that it didn’t need any proof. The NAD disagreed.

Starting with a dictionary, the NAD noted that “Favorite” is defined as a “person or thing that is preferred to all others of the same kind or is especially well liked.” Moreover, by referencing “Puerto Rico,” NAD determined that Goya had clearly defined the market in which the preference claim applies. Accordingly, NAD found that Goya’s tagline could reasonably convey a message that Excelsior is preferred to all other pasta brands in Puerto Rico.

Goya pointed to ads in which its tagline was used in conjunction with “fanciful superlatives,” such as “delicious,” which cannot themselves be measured. But the NAD noted that the use of those superlatives didn’t change its analysis. Highlighting those attributes could suggest that they are the reasons “why consumers prefer Excelsior pasta and contributes to the net impression that consumers in Puerto Rico prefer Excelsior to all other brands.”

Claims that a brand is the “favorite” must generally be supported by sales data or consumer survey data. Because Goya didn’t have either, the NAD recommended that Goya stop using the tagline, both online and on product packages.

This case illustrates why the line between objective claims and puffery can be blurry. It also suggests that if a company determines that there is risk associated with a claim, it should think carefully about where it makes that claim. While removing claims online is can be relatively straightforward,

removing claims on product packages is a lot more complicated and burdensome.