

Case #7077 (05/17/2022)

**Mazee, LLC**

**Glee Gum Chewing Gum**

**Challenger:** *Perfetti Van Melle USA, Inc.*

**Product Type:** *Food/Beverage*

**Issues:** *Disparagement Claims; Environmental Claims; Ingredient/Content/Nutrition; Product Description*

**Disposition:** *Substantiated in Part/Modified-Discontinued in Part*

**BBB NATIONAL PROGRAMS**

**NATIONAL ADVERTISING DIVISION**

PERFETTI VAN MELLE USA, INC., <i>Challenger,</i>	Case	No.	7077
MAZEE, LLC, <i>Advertiser.</i>	Closed 05/17/2022		

**FINAL DECISION**

- A claim that product is “natural” may be different than referring to a product as “all natural” but consumers could reasonably expect it to be free from artificial ingredients, with the exception of a small percentage of the product that does not relate to the function of the product. This is particularly true when the advertiser touts its product as “natural” and distinct from or superior to competing products that use artificial ingredients.

**I. Basis of Inquiry**

The advertising industry established the National Advertising Division (“NAD”) and the National Advertising Review Board (“NARB”) in 1971 as an independent system of self-regulation designed to build consumer trust in advertising. NAD reviews national advertising in all media in response to third-party challenges or through inquiries opened on its own initiative. Its decisions set consistent standards for advertising truth and accuracy, delivering meaningful protection to consumers and leveling the playing field for business. Challenger Perfetti Van Melle USA, Inc. (“Perfetti” or “Challenger”) challenged express and implied claims made by Advertiser Mazee, LLC (“Advertiser”) for its Glee Gum brand of chewing gum on the Glee Gum packaging and website. The following claims served as the basis for this inquiry:

*A. Express claims*

- “Natural chewing gum.”
- “Plastic Free.”
- “Most gum brands use plastic in their gum base. Not Glee. We use chicle, a tree sap sustainably harvested from the rainforests of Central America.”
- “Glee is plant-based through and through; change what you chew.”
- “Plant-Based and Plastic-Free.”
- “Made with chicle.”

- “Glee Gum uses *only* plastic-free gum base.”
- “Glee Gum is a delicious natural chewing gum... Made with chicle, a tree sap harvested sustainably to conserve the rainforest... It’s the best-selling alternative to conventional, synthetic gum in the country! So, change the way you chew! Glee Gum is the natural choice for you.”
- “Natural Chewing Gum. Glee Gum is an all-natural chewing gum...Eco-Friendly, Too! ...made with chicle, a tree sap harvested sustainably to conserve the rainforest of Central America. Once all chewing gum was made with chicle, but today most gum is made entirely of synthetic stuff. Glee Gum uses chicle because it helps to conserve the rainforest, giving trees more value standing than chopped down for timber.”
- “100% Natural and Eco-Friendly, too. Glee Gum is an [sic.] natural chewing gum made without preservatives, artificial flavorings, colorings, or sweeteners...Plus, Glee Gum has the distinction of using natural chicle in its gum base. Using chicle helps sustain the rainforest.”
- “You should buy Glee Gum if you are looking for natural delicious chewing gum.”
- “Glee Gum is a natural eco-friendly plastic-free delicious chewing gum.”
- “All-Natural Plastic-Free Delicious Chewing Gum.”
- “From Tree to Glee.”
- “Ingredients: ... Gum Base (Chicle, calcium carbonate, candellilla wax, citric acid)...”
- “Made with chicle, a tree sap harvested sustainably to help conserve the rainforest, it’s a plastic-free alternative to the junk-filled gums on the market today, a safer bet for you and your family.”
- “After years of research, we were so excited to debut our new gum base recipe in the summer of 2015. And, and we remain proud of it today. It’s 100% natural, made predominantly of chicle with just three additional, natural ingredients: calcium carbonate, candelilla wax, and a pinch of dehydrated citrus peels.”
- The key ingredient to Glee Gum is chicle. Glee Gum is actually one of the only gums in the United States made with chicle. Using chicle helps protect the rainforest and provide sustainable subsistence for the people that live there. Without non-timber forest products like chicle, the trees in the forest would be cut down systematically, as their only commercial value would be as logs. So, consider that the next time you choose your chewing gum, and chew-se wisely!”
- “By using chicle in our gum base, we support chicleros, the workers who tap trees for chicle. We also create an ongoing use for sapodilla trees, which otherwise have economic value only as lumber.”
- “By purchasing Glee Gum, you too are supporting chicle-growing communities, and, in turn, providing incentive for the continued protection of the rainforest.”
- “Eco-Friendly Too!”
- “Natural chewing gum without the junk!”
- “Change What You Chew with Glee Gum natural chewing gum without all the junk!”
- “Made with chicle, a tree sap harvested sustainably to help conserve the rainforest, it’s a plastic-free alternative to the junk-filled gums on the market today, a safer bet for you and your family.”
- “Many people take the time to write to us and let us know how important it is to them that our natural chewing gum is plastic-free. Once you learn about the synthetic chemicals and artificial ingredients that are found in conventional chewing gums (like polyethylene or BHT), it’s hard not to seek out something cleaner. And now, it appears as though those harmful additives are doing more damage to our health than we realized: CNN journalist Sandee Lamotte reports on a new study just released that appears to find a link between phthalates, a

common type of plastic found in foods and its packaging, and early death. You can check out Sandee's report here, along with some helpful ways that you can avoid these harmful plastics in your life. Stay healthy, go plastic-free, go Glee!" Glee Gum Blog, "Phthalates – bad, Glee Gum – good!" <https://www.gleegum.com/phthalates-badglee-gum-good/>.

- "With all the junk available out there, it would be all too easy for Priya to have an unhealthy diet. So like any good mom, when Amy learned about the plastics and chemicals that most chewing gums today are made of, she knew she had to find something better. After some online digging, she came across our site and found Glee Gum. About as close to a tree as a chewing gum can get, vegan Glee is plastic-free, plant based, and allergy friendly, 3 characteristics that have always been important to us, and to our customers." Glee Gum Blog, "Monkey See, Monkey Chew." <https://www.gleegum.com/monkey-see-monkey-chew/>
- "Synthetic materials often can be found in gum base, the indigestible part of gum that provides chewy texture. But the white, gooey stuff pictured below also provides chewy texture. It's called chicle, and it's the sustainably harvested tree sap that we use to make Glee Gum." Glee Gum Blog, <https://www.gleegum.com/sticky-subject-gum-base/>.

### *B. Implied Claims*

- Conventional chewing gum is made of plastic and therefore junk-filled and unsafe for human consumption.
- Conventional chewing gum is made of plastic and therefore contains phthalates which are associated with health risks and early death.
- Glee Gum is better, healthier, safer and more eco-friendly than conventional chewing gum.

## **II. Evidence Presented**

In support of its claims, the Advertiser submitted:

- Ingredient list for each line of Glee Gum chewing gum, and certifications / verifications / product data sheets for certain ingredients.
- Information from the supplier of Glee Gum's chicle gum base regarding the ingredients, and noting the supplier's certifications.
- Background information on the use of Carbon-14 testing to assess whether a product is natural vs. synthetic.
- October 2020 Carbon-14 test results from certified independent testing laboratory, Beta Analytic, measuring the percentage biobased carbon content of Glee Lemon Lime Xylitol.
- August 2021 Beta Analytic's Carbon-14 test results measuring the percentage biobased carbon content of Raw Chicle.
- September 2021 Beta Analytic's Carbon-14 test results measuring the percentage biobased carbon content of Air Action Vigorsol (gum base of one of Perfettis's brands of gum).
- November 2021 Beta Analytic's Carbon-14 test results measuring the percentage biobased carbon content of Vivident Xylit (gum base of one of Perfettis's brands of gum).
- Co-packer information, including global standards certifications related to food safety (IFS, BRC and USA FDA).
- Declaration from the Advertiser's co-packer regarding the production process of Glee Gum.
- FoodChainID Non GMO Verified certification information for all ingredients and the chicle gum base.

In support of its challenge and as rebuttal evidence, the Challenger submitted:

- Background information on chicle and its production
- Declaration by Professor Brenna regarding the analytical methodology used to determine whether a gum contains chicle or synthetic materials; and the results of analysis conducted on Glee Gum and Chicza chewing gum.
- Report by independent “referee” expert, Professor Baldovini, regarding Professor Brenna’s analytical methodology.
- Reference to an episode of a Dutch documentary regarding the biodegradability of “plastic-free” chewing gums.
- Reference to a Dutch Advertising Code Committee decision regarding advertising by BenBits B.V. for its chewing gum.
- Articles regarding “biobased” plastics.

### III. Decision

#### A. Introduction

The Advertiser, Mazee, describes its Glee Gum product line as a very small niche product with only \$1 million in revenue.<sup>1</sup> Glee markets its gum to consumers who prefer a natural gum product. The challenger, Perfetti USA, is part of the Perfetti Van Melle Group, the world’s third largest producer of confectionary products, in particular chewing gum. Perfetti offers products in over 150 countries.

In its challenge to Mazee’s advertising, Perfetti took issue with various claims stating that Glee Gum is all natural, plastic and synthetic free, made with chicle and eco-friendly and a natural and a healthier, safer and eco-friendly alternative to regular chewing gum.

Mazee asserts that its claims are fully supported through product testing and raw material sourcing.

In an NAD proceeding, the advertiser bears the initial burden of providing a reasonable basis for its claims,<sup>2</sup> both express and those reasonably conveyed by its advertisement. Once the advertiser has provided a reasonable basis for its claim(s), the burden then shifts to the challenger to show either that the advertiser’s evidence is fatally flawed or that the challenger possesses stronger, more persuasive evidence reaching a different result.<sup>3</sup>

#### B. Permanently Discontinued Claims and Modified Claims

The Advertiser informed NAD that it intended to discontinue or modify a number of the challenged claims.

The Advertiser stated that it will permanently discontinue the claims:

- “Most gum brands use plastic in their gum base. Not Glee. We use chicle, a tree sap sustainably harvested from the rainforests of Central America;”

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<sup>1</sup> NAD notes that Mazee, LLC is the recent acquirer of Verve, Inc.’s Glee Gum line of chewing gum.

<sup>2</sup> See *AARP and AARP Services, Inc. (Staying Sharp)*, Report #6922, NAD/CARU Case Reports (December 2020); *France Media, Inc. (Commercial Real Estate Publishing Platform)*, Report #6419, NAD/CARU Case Reports (October 2020); *SmileDirectClub, LLC (Smile Direct Club Clear Aligners)*, Report #6946, NAD/CARU Case Reports (February 2021).

<sup>3</sup> *Id.*

- “From Tree to Glee;”
- “By using chicle in our gum base, we support chicleros, the workers who tap trees for chicle. We also create an ongoing use for sapodilla trees, which otherwise have economic value only as lumber;”
- “By purchasing Glee Gum, you too are supporting chicle growing communities, and, in turn, providing incentive for the continued protection of the rainforest;”
- “Change What You Chew with Glee Gum natural chewing gum without all the junk!”;
- “Made with chicle, a tree sap harvested sustainably to help conserve the rainforest, it’s a plastic-free alternative to the junk filled gums on the market today, a safer bet for you and your family;”
- “Many people take the time to write to us and let us know how important it is to them that our natural chewing gum is plastic-free. Once you learn about the synthetic chemicals and artificial ingredients that are found in conventional chewing gums (like polyethylene or BHT), it’s hard not to seek out something cleaner. And now, it appears as though those harmful additives are doing more damage to our health than we realized: CNN journalist Sandee Lamotte reports on a new study just released that appears to find a link between phthalates, a common type of plastic found in foods and its packaging, and early death. You can check out Sandee’s report here, along with some helpful ways that you can avoid these harmful plastics in your life. Stay healthy, go plastic-free, go Glee!” Glee Gum Blog, “Phthalates – bad, Glee Gum – good!” <https://www.gleegum.com/phthalates-badglee-gum-good/>.
- “With all the junk available out there, it would be all too easy for Priya to have an unhealthy diet. So like any good mom, when Amy learned about the plastics and chemicals that most chewing gums today are made of, she knew she had to find something better. After some online digging, she came across our site and found Glee Gum. About as close to a tree as a chewing gum can get, vegan Glee is plastic-free, plant based, and allergy friendly, 3 characteristics that have always been important to us, and to our customers.” Glee Gum Blog, “Monkey See, Monkey Chew.” <https://www.gleegum.com/monkey-see-monkey-chew/>
- “Synthetic materials often can be found in gum base, the indigestible part of gum that provides chewy texture. But the white, gooey stuff pictured below also provides chewy texture. It’s called chicle, and it’s the sustainably harvested tree sap that we use to make Glee Gum.” Glee Gum Blog, <https://www.gleegum.com/sticky-subject-gum-base/>.

Because the Advertiser agreed to permanently discontinue these claims, NAD will not review these claims on the merits. It will treat them for compliance purposes as though NAD recommended they be discontinued and the Advertiser agreed to comply.

The Advertiser also stated that it intended to permanently modify the following claims in the manner shown by the strikethrough edits or added words in bold:

- “Glee is plant-based through and through; ~~change the way you chew.~~”
- “**Gum base** made with Chicle.”
- “Glee Gum is a delicious natural chewing gum... Made with chicle **gum base**, ~~a tree sap harvested sustainably to conserve the rainforest...~~ It’s the best-selling alternative to conventional, synthetic gum in the country! So, ~~change the way you chew!~~ Glee Gum is the natural choice for you.”
- “Natural Chewing Gum. Glee Gum is an all-natural chewing gum...~~Eco-Friendly, Too!~~ ...~~made with chicle, a tree sap harvested sustainably to conserve the rainforest of Central~~

America. Once all chewing gum was made with chicle, but today most gum is made entirely of synthetic stuff. Glee Gum uses chicle because it helps to conserve the rainforest, giving trees more value standing than chopped down for timber.”

- “100% Natural and Eco-Friendly, too. Glee Gum is an [sic.] natural chewing gum made without preservatives, artificial flavorings, colorings, or sweeteners...Plus, Glee Gum has the distinction of using natural chicle in its gum base. Using chicle helps sustain the rainforest.”
- “Glee Gum is a natural eco-friendly plastic-free **gum base** delicious chewing gum.”
- “All-Natural Plastic-Free **gum base** Delicious Chewing Gum.”
- “Ingredients: ... Gum Base (Chicle, calcium carbonate, candellilla wax, citric acid)...”
- “Made with chicle, a tree sap harvested sustainably to help conserve the rainforest, it’s a plastic-free **gum base** alternative to the junk-filled gums on the market today, a safer bet for you and your family.”
- “After years of research, we were so excited to debut our new gum base recipe in the summer of 2015. And, and we remain proud of it today. It’s 100% natural, made predominantly of chicle with just three additional, natural ingredients: calcium carbonate, candelilla wax, and a pinch of dehydrated citrus peels.”
- The key ingredient to Glee Gum is chicle. Glee Gum is actually one of the only gums in the United States made with chicle. Using chicle helps protect the rainforest and provide sustainable subsistence for the people that live there. Without non-timber forest products like chicle, the trees in the forest would be cut down systematically, as their only commercial value would be as logs. So, consider that the next time you choose your chewing gum, and chew wisely!”
- “Natural chewing gum without the junk!”

As with the discontinued claims, NAD did not review the pre-modification claims on the merits, but will treat the modified claims as though it recommended the modifications and the Advertiser agreed to comply. NAD further addressed the modified versions of those claims.

### C. Advertiser’s Testing

The Advertiser explained that Carbon-14 testing is one of the standards to test “natural” (plant or animal by-product sources) vs. “synthetic” (petrochemical) products. Regarding the test results, the higher the value of biobased or biogenic carbon, the greater the proportion of naturally sourced components in the material. For example, a value of 100% biobased carbon indicates that a material is entirely sourced from plants or animal by-products and 0% biobased carbon indicates that a material did not contain any carbon from plants or animal by-products. A value in between represents a mixture of natural and synthetic sources.

The Advertiser submitted to NAD the following Carbon-14 test results:

- October 2020 testing on Glee Lemon Lime Xylitol showing 100% Bio Based Carbon as a fraction of total organic carbon.
- August 2021 testing on raw chicle showing 100% Bio Based Carbon (all natural, no evidence of synthetic source in the analyzed material).

Further, as evidence offered to show that the Carbon-14 testing method is effective and able to detect synthetic materials, the Advertiser tested two of Perfetti’s brands of gum known to contain synthetic materials. Those results showed that Vivident Xylit has a value of 87% biobased and that Air Action Vigorsol has a value of 64% biobased.

Perfetti took issue with the reliability of Mazee's Carbon-14 testing, maintaining that a date discrepancy indicates that the sample provided for testing was not actually the sample tested by Beta Analytic<sup>4</sup> and that the tested sample is not the gum base used in Glee Gum.<sup>5</sup> In addition, the Challenger pointed out that the Beta Analytic test has a 3% precision margin and maintained that a very small amount of the synthetic material Styrene-Butadiene Rubber ("SBR") could easily be hidden in the 3% margin and that Perfetti's tests (discussed further below) detected the presence of synthetic ingredients SBR and glycerol esters of rosin ("GERA") in Glee Gum.

Further, with respect to the testing of Perfetti's own Vivident Xylit and Air Action Vigorsol products, the Challenger maintained that both share the same gum base in almost identical amounts and based on their overall compositions would be expected to have similar biobased carbon percentages. Instead, the unreliability of Beta Analytic testing is demonstrated by the fact that the results show an almost 25% difference in biobased carbon content between them.

#### *D. Challenger's Testing*

The Challenger relied on the analysis of Professor Brenna of the Giulio Natta Department of Chemistry, Materials and Chemical Engineering at the Politecnico di Milano ("POLIMI") who developed an analytical method for determining whether a gum contains chicle or synthetic materials. Professor Brenna analyzed Glee Gum using this methodology and found that there are no chemical markers for chicle present in the gum base of Glee Gum. The Challenger described the methodology and results as follows:

- Chicle's chemical characteristics have been analyzed and described for some time in the scientific literature, and it is well known and accepted that chicle is composed of two main polymeric components: cis-polyisoprene (also cis-1, 4-polyisoprene "CPI") and trans-polyisoprene (also trans-1, 4-polyisoprene "TPI"). Thus, CPI and TPI can be used as markers that indicate the presence of chicle in a product.
- Because both CPI and TPI have simple and characteristic nuclear magnetic resonance ("NMR") spectra for both proton (<sup>1</sup>H NMR) and carbon (<sup>13</sup>C NMR), Professor Brenna used NMR analytical techniques to determine whether CPI and TPI were present in the chewing gums analyzed.
- In addition, because chewing gum is a complex mixture of results, Professor Brenna had to first remove the water-soluble edible components and then perform a series of extractions with solvents of different polarities on the non-edible portion (gum base) to produce a series of samples which could be analyzed by <sup>1</sup>H NMR and <sup>13</sup>C NMR.

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<sup>4</sup>This argument was made as to both the October 2020 and August 2021 Beta Analytic testing. In particular, with regard to the Carbon-14 testing on Lemon Lime Xylitol, Perfetti noted that the date on the photographed sample is October 27, 2020. According to the Beta Analytic report, however, the date the sample was received and the date the results were reported are October 16, 2020 and October 24, 2020, respectively, at least 3 days prior. Similarly, with regard to the Carbon-14 testing on the glee gum base, Perfetti noted that the date on the photographed sample is August 24, 2021, whereas receipt and results dates on the report are August 16, 2021 and August 23, 2021, respectively.

<sup>5</sup>This argument was made as to the August 2021 Beta Analytic testing. Perfetti contended that there is a mismatch between the designation number of the sample tested and the gum base used in Glee Gum.

According to Perfetti, Glee Gum samples were each analyzed using NMR for the presence of CPI and TPI, as well as synthetic gum base substances like SBR and GERA. Further, the Challenger maintained that according to the analysis conducted by Dr. Brenna, Glee Gum showed the absence of the typical CPI and TPI peaks in the <sup>1</sup>H NMR and <sup>13</sup>C NMR Glee Gum product and therefore excluded the presence of chicle in it. Instead, the spectra showed the presence of characteristic peaks of two unnatural, synthetic substances, SBR and GERA, both of which are common synthetic ingredients of regular gum.<sup>6</sup>

Further, the Challenger explained that it asked an independent expert in the identification of natural substances, Professor Baldovini at the Institute de Chimie Nice, France, to review Professor Brenna's analytical methodology. Professor Baldovini was provided with the methodology as well as spectra from the analyses of a sampling of chewing gums tested, which included the Chicza spectra. According to Perfetti, Professor Baldovini carefully reviewed and approved the analytical technique, and, after reviewing the spectra obtained for Glee Gum, agreed with Professor Brenna's findings.

The Advertiser offered no critique of Dr. Brenna's methodology or of the test results other than its assertion that such testing was biased because it was funded by Perfetti. Mazee maintained that its Glee Gum does not contain SBR and/or GERA. There was no evidence in the record that Dr. Brenna had any undisclosed relationship with the Challenger that would affect the objectivity of her conclusions. The use of independent outside experts is common in NAD proceedings, and the fact that an expert was retained by and paid for by one party does not automatically mean that his or her opinion is unreliable absent evidence of bias.<sup>7</sup> Additionally, in this case, the Challenger retained a second expert who opined upon the reliability of Dr. Brenna's work, which only further supported the credibility of Dr. Brenna's findings.

#### *E. "Made with Chicle" Claims*

Perfetti challenged a number of claims that the gum base of Glee Gum is "made with chicle." The claims include:

- "Gum base made with Chicle"
- "Ingredients: ... Gum Base (Chicle, candellilla wax, citric acid)..."
- "Made with chicle, a tree sap harvested, it's a plastic-free gum base."
- "After years of research, we were so excited to debut our new gum base recipe in the summer of 2015. And, and we remain proud of it today. It's 100% natural, made predominantly of chicle with just three additional, natural ingredients: candelilla wax, and a pinch of dehydrated citrus peels."
- The key ingredient to Glee Gum is chicle. Glee Gum is actually one of the only gums in the United States made with chicle.

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<sup>6</sup>The challenger also noted that as a comparison, Professor Brenna analyzed a sample of Chicza chewing gum. Chicza chewing gum is produced by the Consorcio Chiclero, a native community that has been sustainably harvesting Sapodilla tree latex for over 300 years and is known to be made with Chicle. In contrast to the analysis of Glee Gum, the analysis of the Chicza chewing gum product showed the characteristic peaks for CPI and TPI and did not show any signal typical of the rosin esters or SBR.

<sup>7</sup> NAD will even consider the evidence of non-independent experts who have a disclosed relationship with a party, such as being an employee of the party, though such evidence may not be weighted as heavily as the opinion of a fully independent expert.

Chicle, a natural gum for use in gum base, is the coagulated latex (or sap) of the Manilkara Zapota tree, also known as the Sapodilla tree or, in Mexico where chicle is mainly harvested, as the Chicozapote tree.

As support for its claims that the gum base of Glee Gum is “made with chicle,” the Advertiser provided information from its supplier stating that the gum base is 94% chicle tree sap (the other 6% consists of candelilla wax and natural citrus acid), along with the results of Carbon-14 testing by Beta Analytic.

The Challenger contended that information from Mazee’s gum base supplier does not, in fact, show that chicle is an ingredient in the product because the CAS Registry Number it uses to identify its “Chicle Tree Sap” is not the CAS Registry Number of chicle (or any other known chemical substance).<sup>8</sup> Further, the Challenger argued that the results of Mazee’s Carbon-14 tests do not provide any information as to whether the gum base in Glee Gum contains chicle, but only purport to provide information regarding whether the carbon in Glee Gum is plant or fossil-based.

Here, NAD concluded that the Advertiser did not meet its burden to substantiate its chicle claims. Although the supplier document relied on by the Advertiser states that Glee Gum’s gum base is 94% chicle tree sap, the fact that it references a non-chicle, non-existent CAS number raises serious questions about whether chicle was in fact used. Further, the Advertiser’s Carbon-14 test results at best indicates that the product is biobased (i.e. using plant or fossil-based ingredients), and not whether it actually contains chicle.

The results of the Challenger’s un rebutted testing further calls into question whether chicle is present in the Advertiser’s product.<sup>9</sup>

For all these reasons, NAD recommended that the Advertiser discontinue claims that the gum base of Glee Gum is “made with chicle.”

#### *F. “Natural,” and “Plant-Based” Claims*

Perfetti challenged a number of claims that Glee Gum is “natural,” “all-natural,” “100% natural,” and “plant-based” (collectively the “natural and plant-based” claims). These claims include:

- “Natural Chewing Gum.”
- “Glee is plant-based through and through.”
- “Glee Gum is a delicious natural chewing gum... Made with chicle gum base Glee Gum is the natural choice for you.”
- “Natural Chewing Gum. Glee Gum is an all-natural chewing gum.”
- “100% Natural. Glee Gum is an [sic.] natural chewing gum made without preservatives, artificial flavorings, colorings, or sweeteners...Plus, Glee Gum has the distinction of using natural chicle in its gum base.

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<sup>8</sup>The Challenger explained that CAS Registry Numbers are universally used to provide a unique, unmistakable identifier for chemical substances. Each number designates only one substance and is a link to a wealth of information regarding that substance. The CAS number for chicle, which is also used by FDA to refer to chicle, is 8021-77-0. According to the Challenger, the “Chicle Tree Sap” designation used by Mazee’s supplier (12002-19-9) is a non-existent CAS number.

<sup>9</sup> Because the Advertiser did not meet its initial burden, NAD did not assess the Challenger’s own testing on the merits, and this decision should not be read as an approval of the Challenger’s testing methodology.

- “You should buy Glee Gum if you are looking for natural delicious chewing gum.”

NAD determined that one message reasonably conveyed by the Advertiser’s unqualified natural and plant-based claims is that the both the edible components and gum base of Glee Gum are “natural.” Notably, the Advertiser’s claims do not differentiate between these components, but refer to the whole product as a “natural chewing gum.” A claim that product is “natural” may be different than referring to a product as “all natural” but consumers could reasonably expect it to be free from artificial ingredients, with the exception of a small percentage of the product that does not relate to the function of the product.<sup>10</sup> This is particularly true when the advertiser touts its product as “natural” and distinct from or superior to competing products that use artificial ingredients.<sup>11</sup> Therefore, the Advertiser’s evidence would need to support this message by showing that the product is natural and plant-based, including its gum base that makes the product function as chewing gum.

In support of the challenged claims, the Advertiser relied on the results of its Carbon-14 testing and also provided:

- An ingredient list for each line of Glee Gum chewing gum.
- Ingredient information sheets for certain ingredients.
- Co-packer information, including global standards certifications related to food safety (IFS, BRC and USA FDA).
- A declaration from the Advertiser’s co-packer regarding the production process of Glee Gum.
- FoodChainID Non GMO Verified certification information for all ingredients and the chicle gum base.

NAD determined that the Advertiser’s evidence does not provide a reasonable basis for the challenged claims. As to the “plant-based” claims, the evidence does not support the claim that Glee Gum is “plant based” because the Carbon-14 testing does not distinguish between plant and animal sources. A value of 100% biobased carbon indicates that a material is sourced from either plants or animal by-products, and it is not possible to determine whether the carbon is plant based.

Regarding the Advertiser’s “natural” claims, NAD determined that the results of Mazee’s Carbon-14 testing on its gum base, showing 100% Bio Based Carbon (all natural, no evidence of synthetic source in the analyzed material), are not dispositive as to whether the entirety of the product is natural. As noted by the Challenger, gum base is only a small percentage of the composition of a gum product, typically 20%.

NAD next considered the results of the Advertiser’s Carbon-14 testing on Glee Lemon Lime Xylitol. Mazee maintained that these results, showing 100% Bio Based Carbon as a fraction of total organic carbon, confirm that its chewing gum is all-natural. The Advertiser’s co-packer further affirms that all ingredients used are of natural original and it is impossible that the production process transforms the nature of the ingredients.

The Challenger took issue with Mazee’s 100% Bio Based Carbon results by questioning the reliability of the samples used in the tests (as discussed above) and also argued that 100% biobased does not mean

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10 *Heartland Sweeteners, LLC (Ideal® / NARB Panel #161)*, Report #5125, *NAD/CARU Case Reports* (December 2009).

11 *Swiss Research, Inc. (Shugr Sweetener)*, Report #4442, *NAD/CARU Case Reports* (January 2006).

that Mazee's product is natural or plant-based in the way that a consumer would expect it to be because chemical changes could have occurred during the manufacturing process.<sup>12</sup> The Challenger also referenced statements by the supplier of Glee Gum's gum base as evidence of such chemical changes.<sup>13</sup>

NAD found that the Challenger's evidence raises concerns about the presence of synthetic substances in the gum base.<sup>14</sup> As previously discussed, the results of Perfetti's NMR spectra on a portion of the gum base testing showed the presence of characteristic peaks of two unnatural, synthetic substances, SBR and GERA, both of which are common synthetic ingredients of regular gum. Although the Challenger did not quantify the amount of such substances, the Challenger noted that the Carbon-14 test has a 3% precision margin. A very small amount of SBR is sufficient to provide the chewability characteristics closer to conventional gum and this small amount could easily be hidden in the 3% margin. However, Perfetti's testing focused only on a dissolved version of the gum base, and not the rest of the gum.

For these reasons, NAD recommended that the Advertiser discontinue its unqualified natural claims ("natural," "all-natural," "100% natural"), as well as its plant-based claims. NAD noted, however, that nothing in its decision prevents the Advertiser from making appropriately qualified natural or plant-based ingredient claims for parts of the gum other than the gum base, provided that such claims are properly supported and do not imply that the gum base is natural.

#### G. "Plastic-Free" Claims

Perfetti challenged a number of claims that Glee Gum is "plastic-free," including:

- "Plant Based and Plastic Free."
- "Plastic Free."
- "Glee Gum uses only plastic-free gum base."
- "All-natural Plastic-Free gum base delicious chewing gum."
- Implied: Conventional chewing gum is made of plastic and therefore junk-filled and unsafe for human consumption.
- Implied: Conventional chewing gum is made of plastic and therefore contains phthalates which are associated with health risks and early death.

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<sup>12</sup> See e.g. *Procter & Gamble (Benefiber Original and Benefiber Healthy Shape)*, Report #6366, NAD/CARU Case Reports (May 2020).

<sup>13</sup> As explained on the website of ABOAF, the supplier of Glee Gum's gum base: To transform the chicle tree sap, in product suitable for the manufacture of chewing gums it is necessary to carry out processes of washing, purified and polymerization. We need to apply a filtering process with temperature and intensive mixing. To prevent degradation and fermentation. Where it is necessary to add of: Natural candelilla wax and Natural citrus complex. The product purified and ready to be used. We named it: Natural Chicle Gum Base.

<sup>14</sup> Challenger cited to a Dutch Advertising Code Committee decision in a case that Perfetti brought against gum manufacturer BenBits for the proposition that a Carbon-14 analysis does not provide a sufficient basis for BenBits' claim that its chewing gum has a "natural gum base" or that it is "natural chewing gum." NAD does not consider cases in other jurisdictions as precedential, however it is worth noting that, contrary to the Mazee's argument, the Committee did not take issue with the use of Carbon-14 testing as support for "natural" claims. Rather, its decision was based on results of testing conducted on chewing gum product which was in-market at the time of the complaint against BenBits that showed "5% fossil." The Committee found that this test result did not support BenBit's advertising claims for a "natural chewing gum. Perfetti Van Melle B.V. v. BenBits B.V. Case file 2021/00281 (final decision).

It is well-established that an advertiser is responsible for all reasonable interpretations of its claims, not simply the message it intended to convey. In analyzing the messages conveyed by a particular advertisement, NAD typically reviews the net impression created by an advertisement as a whole, not merely words or phrases standing alone, and taking into consideration both the words and the visual images. Neither party provided extrinsic evidence regarding what messages are conveyed by the challenged advertising.<sup>15</sup> In the absence of consumer perception evidence, NAD relied on its expertise to determine the messages reasonably conveyed by the challenged “plastic-free” claims.

NAD considered whether the Advertiser’s “plastic-free” claims, as modified, communicate a falsely denigrating message versus conventional chewing gum. NAD has recognized that an advertiser has a right to openly compare the ingredients in its product to competitor product ingredients, and to share factual information about these ingredients with consumers. However, NAD carefully balances the advertiser’s right to tout the benefits of its product against the challenger’s right not to have its product falsely disparaged.<sup>16</sup>

The Challenger explained that chewing gum ingredients are regulated by the FDA and the synthetic materials in regular gum base are approved as safe for use by the FDA.<sup>17</sup> According to the Challenger, by referring to its absence of synthetic ingredients as “plastic-free” Mazee conveys the message that regular gum is unsafe for human consumption. Further, Perfetti maintained that in the health-conscious consumer world, the term “plastic” has become associated with plasticizers such as phthalates. Regular chewing gum base does not include phthalates as an ingredient.

NAD did not find that these challenged claims, as modified, communicated any implied comparative or falsely denigrating messages versus conventional chewing gum. The claims refer to the absence of an ingredient in a factual manner and without any language indicating superiority on that basis. No competing gum is named. Further, even if these claims were viewed side-by-side with competitor products, NAD has recognized that an advertiser has a right to openly compare the ingredients in its product to competitor product ingredients, and to share factual information about these ingredients with consumers.<sup>18</sup> Further, while the Challenger contended that the term “plastic” has become associated with the health risks of phthalates, in the absence of consumer perception evidence NAD was not persuaded that use of “plastic-free” in a monadic context would imply that regular chewing gum is unsafe. Nor was NAD persuaded by the Challenger’s argument that use of the term “plastic-free” is misleading because it conveys that the product is made of biodegradable and eco-friendly materials.

NAD found that the Advertiser’s Carbon-14 testing reliably shows that the gum base and final product of Glee Gum are “plastic-free” because the results show 100% bio based carbon. Further, Perfetti’s NMR spectra testing did not show the presence of plastic in the gum base, but only indicated the presence of other synthetic substances, SBR and GERA (which the Challenger did not argue are plastics). Therefore, NAD concluded that the Advertiser provided a reasonable basis for its “plastic-free” claims.

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<sup>15</sup> *Dole Packed Foods, LLC (Dole Fruit Bowls)*, Report #5868, NAD/CARU Case Reports (July 2015).

<sup>16</sup> *Id.*

<sup>17</sup> See 21 C.F.R. 172.165.

<sup>18</sup> *Dole Packed Foods, LLC (Dole Fruit Bowl)*, Report #5868, NAD/CARU Case Reports (July 2015).

## H. “Eco-Friendly” Claims

Perfetti challenged several claims that Glee Gum is “eco-friendly,” including:

- “Glee Gum is a natural eco-friendly plastic-free gum base delicious chewing gum.”
- “Eco-Friendly Too!”
- Implied: Glee Gum is better, healthier, safer and more eco-friendly than conventional chewing gum.

The Federal Trade Commission’s Guides for the Uses of Environmental Marketing Claims (“Green Guides”)<sup>19</sup> as well as NAD precedent note that generalized environmental claims are particularly difficult to substantiate because they can convey to consumers that a product provides wide-ranging benefits that are unlikely to be supported given the inherent impact on the environment that product manufacturing entails. Whether advertising conveys such a message depends on the context in which certain claims and statements are made.<sup>20</sup>

Although NAD did not find that the challenged claims, as modified, communicated any implied comparative messages, NAD concluded that these unqualified “eco-friendly” claims reasonably convey the message that Glee Gum is broadly environmentally friendly – a message that is not supported by the evidence in the record.<sup>21</sup> Mazee stated that its claim of “eco-friendly” will only be used for its packaging, which consists of compostable pouches and a recyclable box. However, NAD noted that the challenged claims are not limited to such usage.

Therefore, NAD recommended that the Advertiser discontinue its unqualified “eco-friendly” claims. NAD noted that nothing in its decision prevents the Advertiser from modifying the claims to use qualifying language which limits it to a specific benefit or benefits (e.g., compostable pouches, recyclable box), provided that such claims are properly supported.

## IV. Conclusion

NAD recommended that the Advertiser discontinue claims that the gum base of Glee Gum is “made with chicle.”

NAD recommended that the Advertiser discontinue its unqualified natural claims (“natural,” “all-natural,” “100% natural”), as well as its plant-based claims. NAD noted, however, that nothing in its decision prevents the advertiser from making appropriately qualified natural or plant-based ingredient claims for the edible portion of the gum, provided that such claims are properly supported and do not imply that the gum base is natural.

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<sup>19</sup> 16 CFR Part 260.

<sup>20</sup> *PurposeBuilt Brands (Green Gobbler Drain Clog Dissolve)*, Report #6982, NAD/CARU Case Reports (January 2022).

<sup>21</sup> Section 260.4(b): Unqualified general environmental benefit claims are difficult to interpret and likely convey a wide range of meanings. In many cases, such claims likely convey that the product, package, or service has specific and far-reaching environmental benefits and may convey that the item or service has no negative environmental impact. Because it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims, marketers should not make unqualified general environmental benefit claims.

NAD recommended that the Advertiser discontinue its unqualified “eco-friendly” claims. NAD noted that nothing in its decision prevents the Advertiser from modifying the claims to use qualifying language which limits it to a specific benefit or benefits (e.g., compostable pouches, recyclable box), provided that such claims are properly supported.

#### **V. Advertiser’s Statement**

The Advertiser will comply with the NAD’s decision.

The Advertiser would like to thank the NAD for its review of the claims raised by the Challenger. The Advertiser respectfully disagrees with the NAD’s conclusions and believes that it has provided more than adequate evidence and documentation to support the claims that its gum base is made with chicle and that its products are eco-friendly and all-natural. **(#7077 ZW, closed 05/17/2022)**

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