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Lawsuits are common among competitor companies for false advertising of their advertisements on air. This is a violation of the Lanham Act that was enacted by Congress in 1946. This Act prohibits companies from carrying out activities such as false advertising, trademark infringement, and dilution of their products. This paper addresses two questions concerning the court case between Pharmacia, the complainant, and GlaxoSmithKline Consumer Healthcare, the defendant, on a product meant to help people quit smoking.

### **Question 1: On What Basis Does the Court Conclude That GSKCH likely Violated the Lanham Act?**

Pharmacia is a company that makes Nicotrol, which is an inhaler that helps smokers to stop feeling the urge of smoking again. This company goes to court and sues GlaxoSmithKline Consumer Healthcare (GSKCH), which is a company that manufactures Nicorette, a nicotine gum and a skin patch called Nicoderm. Pharmacia sues GSKCH for airing two commercials entitled, " Revised Tough Decision," and another one entitled, " Revised Smart Choice," for they contained ambiguous information, which may mislead the public in benefit of GSKCH to make significant sales of their products. This claim from Pharmacia gives them a chance for a court hearing against GSKCH.

Furthermore, the plaintiff during the court proceedings ruled out that GSKCH had likely violated the Lanham Act on the basis that, the " Revised Tough Decision" advertisement, contained information, which stated that Nicorette could be used " anywhere" and " anytime." This was based on Pharmacia's argument that the label on Nicorette stated, " do not use the gum while eating or drinking, not to chew one piece after another, and not to chew

more than twenty- four pieces a day.” Pharmacia further argued that the information in the ad is ambiguous because, there are periods in a day in which one cannot take Nicorette chewing gum. For instance, Nicorette cannot be used when one is pregnant or intends to become pregnant, when one is breast-feeding or intends to breast feed, instances of a recent heart attack or stroke, heart diseases, uncontrolled chest pain, when one is a non-smoker, or when one is under 18 years of age (How to use Nicorette gum, 2015). Of equal importance is the second advertisement entitled, “ Revised Smart Choice,” where Pharmacia argued that the ad makes a false expression that doctors prefer Nicoderm because it could be worn for a longer duration between 16-24 hours. Facts showed that GSKCH did not have evidence over the claim that doctors preferred Nicoderm to Nicotrol (Halbert, 2009). The court therefore, concluded that GSKCH had violated the Lanham act based on the allegations made by Pharmacia and the restrictions mandated in the Lanham Act, which restricts companies from releasing exaggerated and false information to viewers for purposes of increasing sales of their products. In reaching this argument, the court argued that viewers could interpret the information in a different way, thus choosing the wrong product.

## **Question 2: What Public Interest are at Stake in This Case**

This case generally involves the public because plaintiffs rely upon consumer surveys to determine the fate of a certain product. If an advertisement contains misleading and exaggerated information, then the public would end up using a product that is ineffective due to the biased information contained

in a commercial. Therefore, the court found that the decision for an injunction would favor the interest of the public because; consumers should only access products that would not affect their health negatively. This shows that the public is interested in the delivery of a product that favors them and it is true enough such that their lives are not at risk.

In conclusion, the court ruled that GSKCH violated the rules of the Lanham Act for advertising a product that was biased and false enough to mislead the public. The court viewed the message in the two advertisements as ambiguous hence requesting the need to consider the interest of the public over the injunction of GSKCH products.

## **References**

Halbert, T., & Inguli, E. (2009). Law and Ethics in the business environment. (p. 248-251). Mason, OH: Cengage Learning.

How to use Nicorette gum. (2015), Retrieved From [http://www.discountnicotinegum.com/how\\_to\\_use\\_nicorette\\_gum.asp](http://www.discountnicotinegum.com/how_to_use_nicorette_gum.asp)