



United States of America  
FEDERAL TRADE COMMISSION  
Washington, D.C. 20580

Division of Advertising Practices

February 22, 2024

Laura Brett, Esq.  
Vice President  
National Advertising Division  
112 Madison Avenue, 3rd Floor  
New York, NY 10016  
lbrett@bbbnp.org

Re: Referral of Advertising for DOVATO® HIV Treatment Medication

Dear Ms. Brett:

We have reviewed the National Advertising Division (“NAD”) referral of a competitor challenge by Gilead Sciences, Inc. (“Gilead”) regarding advertising by ViiV Healthcare Company (“ViiV”) for its prescription HIV treatment medication, DOVATO®. According to the referral, Gilead asserted that ViiV’s advertising for DOVATO® contained express and implied comparative safety and efficacy claims that were deceptive. You also advised us that ViiV declined to participate in NAD’s review of its advertising, including because the Food & Drug Administration (“FDA”) already reviewed and approved the challenged advertising and claims. Because ViiV declined to participate, NAD did not render an opinion on the merits of Gilead’s challenge and, instead, referred the matter to the Federal Trade Commission (“Commission”), and to FDA, for review.<sup>1</sup>

In addition to reviewing the NAD referral, we discussed the challenged advertising with ViiV’s counsel, and we have examined additional evidence regarding the claims at issue. As a result, we have determined not to take additional action at this time. In reaching this conclusion, we also considered a number of factors, including resource allocation and enforcement priorities, the nature of any FTC Act violation, and the type and severity of any consumer injury.

Staff’s decision to forego a formal investigation at this time is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission

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<sup>1</sup> We are responding only on behalf of the Commission.

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reserves the right to take such further action as the public interest may require. The Commission appreciates your referral and the opportunity to continue to assist in supporting the NAD.

Sincerely,

A handwritten signature in black ink that reads "Courtney A. Estep". The signature is written in a cursive, flowing style.

Courtney A. Estep  
Chief of Staff  
Division of Advertising Practices