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Decision of the ADVERTISING REGULATORY BOARD

Complainant	Reckitt Benckiser Pharmaceuticals South Africa Proprietary Limited
Advertiser	Unilever South Africa Proprietary Limited
Consumer/Competitor	Competitor
File reference	Lifebuoy - Reckitt Benckiser
Outcome	Partially upheld
Date	7 October 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Reckitt Benckiser Pharmaceuticals South Africa (“Reckitt Benckiser”) against advertising for Unilever South Africa’s (“Unilever”) 175g hygiene soap bar marketed and sold under the Lifebuoy trade mark.

Description of the advertising

The respondent’s Lifebuoy hygiene bar soap makes the following claims, with which the complainant takes issue.

*“25g Extra Value\**

*\*vs leading competitors*

*“10 infection causing germs, 1 protection\**

*\*as per lab.”*

Both asterisked comments mentioned above appear on the rear of the pack.

## Complaint

Herbert Smith Freehills submitted a complaint on behalf of Reckitt Benckiser. The complainant submits that the advertiser seeks to create the impression that the customer will receive substantial (25g) additional value by purchasing Lifebuoy hygiene bar soap over competitor products. Given the facts that: (1) the front, not rear, of the soap bar packaging is immediately visible to consumers; (2) the view does not explain how consumers will receive the additional value other than from an extra 25grams; and (3) the only explanation appears on the rear of the pack, the complainant submits that the hypothetical reasonable consumer will perceive the claim to mean that they will obtain more soap in the pack and that the extra 25g is essentially perceived as free.

In addition, the complainant submits that the claim on certain Lifebuoy packs that Lifebuoy with active silver protects from 10 infection causing germs suggests that the product has healing or curative features.

The complaint is based on the following reasoning.

### **The 25g claim**

The complainant submits that the disclaimer is too small, too well-hidden on the rear of the pack and does not sufficiently substantiate the claim made by the advertiser in relation to the 25g of extra value. The complainant submits that the claim is vague, as it does not explain what sort of extra value is gained. It submits further that claims about value to customers cannot be made without reference to retail prices. In reality, prices are set by retailers and fluctuate greatly. The complainant provided an annexure setting out the various prices for both Lifebuoy and Dettol soaps, and submitted that based on this the advertiser “has done nothing more than blatantly lie to consumers in making this claim”. The complainant therefore calls for substantiation of the claim in accordance with Clause 4.1 of Section II of the Code. The complainant makes the further submission that the claim is misleading in terms of Clause 4.2.1 of Section II of the Code and also in breach of Clause 4.3.1 of Section II as the advertiser seeks to lead consumers to believe that they will either receive more soap for the same price than when they previously purchased the advertiser’s own product, or pay less per gram for the advertiser’s products than they would if purchasing competitor products. The complainant calls for substantiation in this regard, in terms of Clause 4.3.1.2 of Section II.

## **The 10 germ claim**

The complainant advises that this is not the first time that the advertiser has made this claim and refers to the Advertising Standards Authority's ruling in Unilever/Lifebuoy Active Silver Formula/Reckitt Benckiser/2018-7718F, in which the ASA ruled that the claim had not been sufficiently substantiated. The complainant submits that this claim remains unsubstantiated and that the advertiser acts in willful disdain for the authority of the ARB and its predecessor, the ASA.

## **Response**

Unilever South Africa Proprietary Limited responded to the complaint by rejecting all aspects thereof. In summary, the 25g extra value \*versus leading competitors claim is correct as a matter of fact, as the Lifebuoy soap bar is priced per gram in the aggregate less than the Dettol 150g soap bar and the claim is therefore not misleading. The respondent also submits that the 10 germ claim can be substantiated.

## **The 25g claim**

The complainant and respondent are competitors in the health, hygiene and home products market and the complainant's main product in this market is the Dettol range, while the main product in this range belonging to the advertiser is the Lifebuoy range. The advertiser provides background to the matter, some of which is irrelevant, and the Directorate notes that if the advertiser has an issue with any of the complainant's advertising claims, it should file a complaint with the ARB to deal with such issues.

The advertiser advised that the complainant reduced the size of its bar from 175g to 150g in about August 2018. The advertiser, on the other hand, retained the size of its hygiene bar at 175g and the 175g bar remained priced at substantially the same retail price, which yielded a significant value to its consumer, versus those purchasing the complainant's product. The advertiser submits that the price comparison provided by the complainant is not a true reflection as it is an example of an isolated retail store and not of the complete price per gram average in all retail stores. In this regard, the advertiser submitted a price per gram average in all retail stores across South Africa, compiled by AC Nielsen. The average price per gram over the period of August 2018 to July 2019 was provided and the price per gram of Lifebuoy in the 175g bar is lower than that of the Dettol 150g bar, thus substantiating the 25g extra value claim made by the advertiser.

The advertiser then responded to the complainant's criticism of the on-pack disclaimer that refers to "vs leading competitors". The advertiser submits that reference to the competitors can only be to competitors in the segment of hygiene soaps. The only other product in this market segment, aside from the two mentioned here, is the Protex 150g bar soap. The advertiser states that the value claim together with its disclaimer are clearly displayed to consumers on packaging, and where possible and within reason, also in store advertising. The advertiser denies that its extra value claim is misleading.

### **The 10 germ claim**

The advertiser filed an appeal against the ASA ruling mentioned by the complainant, as well as an application to suspend the ruling. Neither of these were decided upon, due to the ASA being placed in liquidation. The advertiser submits that no adverse finding can be made against it as it took all the necessary steps and paid all the necessary fees to reverse the ruling. It has also obtained fresh substantiation for the 10 germ claim.

The advertiser submitted a research report from Bhavan's Research Center in India, a fresh report by Dr Jardine, and a report from Mr Michele Cavalleri, an expert microbiologist of Eurofins BioPharma Product Testing Facility.

### **Application of the Code of Advertising Practice**

The following clauses were considered in this matter:

- Substantiation- Clause 4.1 of Section II
- Misleading Claims- Clause 4.2.1 of Section II
- The value of goods – Clause 4.3 of Section II

### **Decision**

Having considered all the material before it, the Directorate finds as follows.

### **The 25g claim**

What has essentially happened in this matter, it would seem, is that Dettol have started marketing a 175g bar that is very similarly priced to its 150g bar. Lifebuoy wish to draw

the consumer's attention to this anomaly. The question is whether they have succeeded without misleading consumers.

The packaging in question is:



The Directorate agrees that the hypothetical reasonable consumer would assume that the 25g of extra value relates to pricing. More specifically, the consumer would understand that the price of the Lifebuoy 175g is either the same or lower than a Lifebuoy 150g bar, or the same or lower than its competitors' 150g bars.

The Directorate tends to agree with the Respondent that the disclaimer would go largely unnoticed by the consumer. It is small, on the back of the pack, and not an obvious disclaimer for the claim type. Consumers are familiar with promotions where products offer an “extra 10%” or “250ml free” as compared to their own products.

Given this, the Directorate believes that the consumer's first assumption would be that the value proposition is between Lifebuoy 150g and Lifebuoy 175g. However, the complication that becomes apparent with this interpretation is that Lifebuoy does not have and has never, it would appear, had, a 150g bar.

**The Directorate is already concerned at this point about ambiguity, as the consumer may reasonably assume that somewhere there is a Lifebuoy 150g bar on sale, at the same price, and that they are getting 25g free on that. This is not so. Clause 4.2.1 of Section II clearly states that a claim cannot be misleading by ambiguity, and the claim is therefore already in breach of Clause 4.2.1 of Section II.**

The next assumption that a consumer might reasonably make is that while there is not a 150g bar, the pricing has been adjusted so that, against the previous 175g price, this new specially marked packed is now comparatively giving 25g free. In other words, if one took the previous price of the 175g Lifebuoy bar, and worked it out to a price per gram; the consumer is now only paying what that price per gram would be for 150g, making the other 25g “extra value”.

**There is nothing before the Directorate to show that this is the case, so that interpretation is also unsubstantiated.**

The final interpretation, and the one that the advertiser argues, is that the consumer would see the disclaimer or take into account the available products, and understand that the comparison is “vs leading competitors”.

The Directorate is of the opinion that on this interpretation, the proposition is that compared to leading competitors in the hygiene soap category, the Lifebuoy 175g soap is the same price or cheaper than the competitors’ 150g offerings.

The advertiser attempted to substantiate the claim by referring to pricing data, provided from AC Nielsen.

The AC Nielsen data does, *ex facie*, support this interpretation vis-à-vis the Dettol 150g offering.

However, the disclaimer does not refer to “the leading competitor”, it refers to “leading competitors”.

On the advertiser’s own version, the third major or leading competitor in this market segment is the Protex hygiene bar soap. The Directorate would be interested to know what the value of the 175g bar is, as against the entire market segment, including Protex, and such information is not provided.

Substantiation must be market relevant and the absence of pricing information relating to a major competitor in the relevant market segment is crucial, especially given the wording of the disclaimer. The Directorate concludes that this omission renders the substantiation incomplete in relation to the market.

**Therefore, even on the interpretation proposed by the advertiser, the “25g extra value” claim is not adequately substantiated and in breach of Clause 4.1 of Section II of the Code.**

For the avoidance of doubt, the Directorate wishes to recap its finding:

- The disclaimer is hidden at the back of the pack, in small print, making it largely irrelevant;
- Given this, the claim is ambiguous at best and, as not all reasonable interpretations are supported, is in breach of Clause 4.2.1 of Section II.

- Even if the claim is clarified as being against “leading competitors”, the substantiation currently available does not represent all leading competitors. This renders it in breach of Clause 4.1 of Section II.

### **The 10 germ claim**

Before dealing with the claim in question, which was adjudicated upon by the ASA, as it then was, it is necessary to briefly discuss whether the advertiser is in breach of the earlier ruling. Given the tumultuous history of the ARB and its predecessor, together with the fact that the advertiser tried to both suspend and appeal the ruling, and the fact that there is now new substantiation on the table, the Directorate will not consider a breach ruling, but rather look at all of the new material before it for this complaint.

The claim in question is:

*“10 infection causing germs, 1 protection\**

*\*as per lab.”*

The advertiser has submitted the following:

- a research report from Bhavan’s Research Center in India;
- a fresh report by Dr Jardine;
- A report from Michele Cavalleri, an expert microbiologist of Eurofins BioPharma Product Testing Facility.

The website for Bhavan’s Research Center states the following:

Bhavan's Research Center (Microbiology) was instituted in April 2005, by the Faculty of the Department of Microbiology – Bhavan’s College, in partnership with one of the prestigious management institutes of India - S.P. Jain Institute of Management and Research (S.P.J.I.M.R), Mumbai. BRC is an entrepreneurial knowledge center created to promulgate research and analysis for the industry and strives to bridge academia-industry gap.

It would appear that the research laboratory in question is independent and credible.

The ASA frequently considered the question of whether Dr Jardine was independent and credible, and repeatedly found him to be so. The ARB sees no argument to divert from that approach.

The website for Eurofins BioPharma states:

Eurofins is a first-class biopharmaceutical outsourcing services partner (Contract Research Organization - CRO, Contract Development & Manufacturing Organization - CDMO), working with pharmaceutical, chemical, biotechnology, medical device and cosmetic clients. The Group covers the whole chain of drug development thanks to an international network of laboratories and testing units with global reach, uniform QA systems and high quality services.

It would appear from LinkedIn that Michele Cavalleri has held a position as Lab Manager at Eurofins Biopharma for over 10 years, managing the GLP Test Facility certified by Italian health authorities (Ministry of Health). Michele Cavalleri also holds an MSc in Microbiology and therefore appears to be an acceptable expert in this matter.

The independence and credibility of the substantiation is therefore also acceptable to the Directorate.

In its earlier ruling, the ASA Directorate made the following statement “...the Lifebuoy product was tested against eight ‘germs’” and while the non-confidential summary reports list 12 infections or ‘health problems’ caused by the these ‘germs’ eight of these infections/health problems were caused by four ‘germs’.” The ASA Directorate went on to find that if the claim had been that Lifebuoy protects from 10 illnesses caused by germs, this would not have been a problem.

In the current matter, the Directorate considered all the substantiation placed before it, with this finding in mind.

Having regard, firstly, to the non-confidential summary provided by the advertiser of the Bhavan’s Research Centre study, the results are summarised as follows:

“Results for determination of germ protection efficacy of Lifebuoy Soap bar on germs causing more than 10 infections (Diarrhea, Pneumonia, Ear Infections, Eye Infections, Acute respiratory infections, Enteric Fever, Dysentery, Boils, Throat Infection, Gastroenteritis, Impetigo, Soft Tissue Infection, Prickly Heat)...” The report then goes on to list the 12 germs in question

The conclusion states that these results indicate that:

- “Lifebuoy soap bar provides protection from germs causing more than 10 infections.
- Lifebuoy soap bar delivers on the claim- 10 infection causing germs, 1 protection.”



The claim is “10 infection causing germs, 1 protection”. Consumers are likely to think that, if using the advertiser’s bar soap product, they would be protected from 10 different germs, and most consumers would believe that these 10 germs would cause 10 different infections. The average consumer would not understand that some of the germs killed by the product could in fact be causing the same infection. In other words, the take out is that consumers are protected from 10 infections caused by 10 germs.

The report lists 13 infections as well as 12 germs or bacteria that cause infections, thus more than adequately substantiating the claim made by the advertiser, in the manner in which it would be perceived by consumers.

Turning then to the report by Dr Jardine, he commences by explaining why the claim was initially reviewed in the context of protection against 10 infections, rather than protection against 10 germs. He states that he has now considered further data and reviewed the claim in a slightly different context, that of protection against germs or bacteria. He concludes that the claim made by the advertiser on its packaging is supported, irrespective of whether the claim is interpreted as protecting against 10 infections or against 10 germs. Both of these interpretations are supported by the research.

Dealing lastly with the report submitted by Michele Cavalleri of Eurofins BioPharma Product Testing. This report serves to:

- Confirm the Bhavan Research center findings in general;
- Specifically confirm the germ kill on 12 germs.

**On its own, this report would not have served as adequate substantiation, but given the existence of the non-confidential summary of the research, as well as Dr Jardine’s report, the Directorate concludes that the claim is adequately substantiated in terms of Clause 4.1 of Section II of the Code. It is also not misleading in terms of Clause 4.2.1 of Section II of the Code.**

### Sanction

Insofar as the “25g extra value” claim is concerned, the advertiser is ordered to withdraw the advertising in accordance with the provisions of Clause 14 and Clause 15.3 of the Procedural Guide. In the case of packaging, this is three months. This deadline is understood to apply to new packaging disseminated by the advertiser after the three month period.