

## Decision of the ADVERTISING REGULATORY BOARD

Complainant	Liesel Kershoff
Advertiser	Pioneer Foods Groceries (Pty) Ltd
Consumer/Competitor	Consumer
File reference	20 - Pioneer Foods (Fruitree) - Liesel Kershoff - 23-11-18
Outcome	Dismissed
Date	22 January 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Mrs Liesel Kershoff against the packaging of Pioneer Foods' Fruitree Tropical variant, in particular the 5 litre and 1 litre products.

### Description of the advertising

The packaging of the 5 litre product looks very similar to the 1 litre product. The boxes are the same colour blue and the logo and variant names are the same. The fruits depicted on the two boxes are also similar. However, the ingredient lists and nutritional information tables are different. For example, unlike the 5 litre product, the 1 litre product

lists sugar as an ingredient. The sugar content of the 1 litre product is shown to be almost three times that of the 5 litre product, and its energy value is more than twice that of the 5 litre product.

## Complaint

The Complainant submitted that she is familiar with the 1 litre product but decided to buy the 5 litre product. When she arrived home, however, she found that the 5 litre product tasted completely different from the 1 litre product.

She argued that although the packaging looks 90% similar, the ingredients are different, so they are essentially two different juices and should not be sold under the same packaging and name.

## Response

The Respondent submitted that it is not a member of the ARB, and does not submit itself in general to the jurisdiction of the ARB. However, in this particular instance, it decided to respond to the complaint to demonstrate its concern for its consumers.

The Respondent submitted that the packaging clearly lists the ingredients and provides a nutritional table which shows that one contains added cane sugar and the other does not. The explanation for this is rather simple and innocuous. Like most beverage companies, the Respondent is reformulating its juice based drinks in accordance with government policy on the reduction of sugar in beverages. It has already replaced the packaging for the 5 litre container and the juice therein already has less sugar (and hence a different taste), whereas it has not yet run out of the previous 1 litre packaging. As such, it packs the juice that corresponds with the information on the packaging therein, as to do otherwise would be misleading to the consumer. Once all the existing 1 litre packaging has been used up, the Respondent will have the same information on both the 1 litre and 5 litre containers, and they will contain exactly the same juice formulation.

The Respondent expressed its regret that the consumer did not enjoy the reduced sugar juice. However, as this is government policy and has tax implications, it is outside the Respondent's control.

## Application of the Code of Advertising Practice

The following clauses were considered in this matter:

Misleading claims – Clause 4.2.1 of Section II

## Decision

Having considered all the material before it, the Directorate of the ARB issues the following finding.

### Jurisdiction

The Advertiser has advised that it is not a member of the ARB and does not consider itself bound by the decisions of the ARB.

The Memorandum of Incorporation of the ARB states:

*“3.3 The Company has no jurisdiction over any person or entity who is not a member and may not, in the absence of a submission to its jurisdiction, require non-members to participate in its processes, issue any instruction, order or ruling against the nonmember or sanction it. However, the Company may consider and issue a ruling to its members (which is not binding on non-members) regarding any advertisement regardless of by whom it is published to determine, on behalf of its members, whether its members should accept any advertisement before it is published or should withdraw any advertisement if it has been published.”*

In other words, if the Advertiser is not a member and does not submit to the jurisdiction of the ARB, the ARB will consider and issue a decision on the advertising for the guidance of our members.

This decision will be binding only on ARB members and on broadcasters in terms of the Electronic Communications Act.

### Merits

The main objective of the Advertising Regulatory Board is to protect consumers from advertising that contravenes the Code of Advertising Practice. In the vast majority of instances where advertising is found to contravene the Code, the ARB will require the advertising to be withdrawn or amended.

In this matter, the advertiser explained why two products with similar looking packaging tasted different and had different ingredients. It also submitted that it is in the process of reformulating its products in accordance with government policy. The 5litre version has been changed and it is in the process of changing the 1 litre version, and allowing sell through of old stock. In other words, soon the juice in the 1 litre container will have the same ingredients, and therefore taste the same, as the juice in the 5 litre container.

While this does not address the Complainant's distaste for the reformulated Fruitree Tropical product (which is not an advertising issue), it does address the concern that two products with similar looking packaging have different ingredients and taste different. There is therefore no need to consider or investigate the matter any further.

The ARB Directorate is satisfied that the actions taken by the advertiser is an adequate resolution to the advertising-related concerns expressed by the Complainant.