

Decision of the ADVERTISING REGULATORY BOARD

Complainants	Siebert Kruger Louis Fourie
Advertiser	SA Natural Products (Pty) Ltd
Consumer/Competitor	Consumer
File reference	535 – Bio-Strath – Siebert Kruger & Another
Outcome	Upheld
Date	19 November 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Siebert Kruger and Louis Fourie against radio and television advertising for SA Natural Products’ “Bio-Strath” nutritional supplement.

Description of the advertising

The advertising (which was broadcast in English and Afrikaans), features a female voice stating as follows:

“30%! Bio-Strath improved my son’s marks by 30%. School was always a fight. Tutors, teachers, diet, we tried everything! My friend recommended Bio-Strath. I didn’t know the brain is the hungriest organ of the body?! Bio-Strath feeds the brain and body, and is clinically proven. My boy has changed; he’s confident, and

school's a happy place. My whole family takes Bio-Strath, because it's more than just brain food".

At the end, the jingle "Start your day the Bio-Strath way" is heard.

The television commercial features the same voice-over script, and contains visuals to accompany the storyline. These include, *inter alia*, a disheartened learner who progresses from a "F" on his test to a "C+" . At the end, the words "Bio-Strath Daily Nutritional Supplement IMPROVES MEMORY & CONCENTRATION" appear on-screen.

Complaints

The Complainants took issue with the suggestion that Bio-Strath was responsible for the significant improvement in the learner's academic performance. Both complainants submitted that this was an unproven and misleading statement.

Mr Fourie noted that this product is a supplement, which meant that it is not subjected to rigorous testing prior to making these claims. This should not, however, provide an opportunity to peddle lies. If the claimed impact on academic performance were true, this product would provide the solution to South Africa's educational crisis.

Mr Kruger added that this product was not even an Over-The-Counter Medicine, and was stocked on general shelves, meaning that it could be bought indiscriminately. Academic grades are improved by studying, not by consuming supplements. At best, this product might contribute to improved brain functioning, which might assist while studying. The manner in which the Advertiser chose to market its product, however, ignores the significance of psychological, medicinal, genetic, environmental and individual factors which all impact on one's ability to study and perform well. The product was being marketed as a "quick fix" for poor academic performance, which is blatantly opportunistic, and warrants a reprimand.

Response

The Advertiser explained that this commercial was based on a testimonial received from a mother who was thrilled with the impact Bio-Strath had on her child's academic performance. The words contained in the commercial are extracts from her testimony. The fact that this is a mother's personal experience is clearly articulated through the use of pronouns such as "My son's grades" and "We tried everything". There is no suggestion that this was the outcome of a research trial or that other consumers would experience similar results. A copy of the relevant testimonial was provided.

It added that several academic and clinical trials have proven Bio-Strath's positive impact on signs and symptoms of ADHD, restlessness, agitation, and academic performance. As evidence of this, the Advertiser included documents titled "Annexure A", "Annexure B" and "Annexure C", which contained lists of publications in this regard.

Given the pertinent statement that "*Bio-Strath feeds the brain and body*", it is made clear that the increase in academic performance is not attributed to the consumption of Bio-Strath, but rather that Bio-Strath's mode of action is nutritional, and that it enhances bioavailability and absorption of micronutrients, which are essential for the healthy function of the brain and central nervous system.

In short, the advertising contains extracts taken from a mother's testimonial, and is clearly communicated as her personal experience. Relying on such information cannot be regarded as deceitful, and is unlikely to be interpreted as a suggestion that using this product would yield similar improvements for all other consumers.

Application of the Code of Advertising Practice

The following clauses of the Code were considered in this matter:

- Substantiation – Clause 4.1 of Section II
- Misleading claims – Clause 4.2.1 of Section II
- Testimonials – Clause 10 of Section II

Decision

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

Before dealing with the merits, it is important to outline relevant factors influencing the decision:

- I. The commercial is scripted to sound like a testimonial, and reasonable consumers are likely to interpret it as such. As a consequence, the quantified improvement (30%) would not likely be viewed as indicative of the exact extent to which a child's academic results are going to improve, but rather a general indicator that the results will improve. Reasonable consumers are unlikely to expect an improvement of exactly 30% in their child's academic results. However, the commercial places significant emphasis on the figure of 30%. Consumers would therefore still expect to see a marked improvement, significant enough to be attributed to the product.
- II. The Commercial specifically attributes the child's academic improvement to the consumption of Bio-Strath. The script pertinently states that neither additional academic assistance ("Tutors, teachers") nor healthy eating ("diet") resulted in any improvement. The suggestion is clearly that the consumption of Bio-Strath, exclusive of extra tutoring and healthier diet, brought about this marked improvement in the child's academic performance. In short, it creates an efficacy claim for the product, which is what gave rise to the complaints at hand.

The Advertiser, in its defence, places great emphasis on the fact that this was based on a testimonial, and therefore does not actually amount to efficacy claims. It therefore makes sense to first consider the Code's requirements when dealing with such advertising.

Clause 10 of Section II prescribes how user testimonials may be leveraged for advertising purposes. It, *inter alia*, requires such testimonials to be real (i.e. advertisers may not fabricate testimonials in order to convince potential customers), and to conform to the principles of the Code (i.e. user testimonials should not contravene other principles contained in the Code of Advertising Practice). Dealing specifically with efficacy claims communicated in testimonials, Clause 10.3 states as follows:

“Testimonials should not contain any claims to efficacy which cannot justifiably be attributed to the use of the product, and any specific or measurable results claimed should be fairly presented. Where ‘before’ and ‘after’ claims are made, they should be capable of substantiation, expressed and illustrated in such a way as to permit a fair comparison to be made”.

The Advertiser emphasised that the claims contained in this commercial emanate from a user testimonial, a copy of which was included in its official response. It insisted that consumers would readily understand that the claimed efficacy relates to this mother’s personal experience, and that there was no insinuation that similar results would necessarily await other consumers who use the product. The Directorate is not convinced by this argument.

While the Directorate accepts that pronouns such as “I”, “My”, and “We” are likely to suggest reliance on a user’s testimonial, this does not absolve an advertiser from ensuring compliance with the Code. Advertisers frequently rely on such “user stories” to create an emotional link with potential customers. In such instances, the inherent communication becomes “It worked for me, and will work for you”. Advertisers who exploit this association for the purpose of making unproven claims would clearly be in contravention of the principles contained in the Code. Testimonials cannot be used as a vehicle for unproven efficacy claims. It is for this reason that the Code expects testimonials to be genuine, current and compliant with the provisions of the Code.

The Directorate noted the following when scrutinising the testimonial provided by the Advertiser:

- 1) The testimonial was received in 2006, 13 years ago.
- 2) It relates the experience of a mother who has two children, one in grade 6 and the other in grade 1.
- 3) She explains that both children started using Bio-Strath tablets in the second quarter of that year, and that her eldest saw a marked improvement in his subjects, whereas the youngest has achieved 100% in all his grade 1 spelling tests.
- 4) While the mother claims an average improvement of 30% for her son in grade 6, she only lists two examples; English (second language), which reportedly increased from 14% to 68% (an increase of 54%) and Mathematics, which increased from 22%

to 48% (an increase of only 26%). No other marks are disclosed, and no information is provided on the academic performance of her grade 1 child prior to using Bio-Strath.

- 5) The testimonial contains no reference to having tried tutors, teachers or a change in diet, something which is pertinently claimed in the commercial.
- 6) The testimonial does not suggest that the entire family has since started using Bio-Strath, something which is pertinently claimed in the commercial.

This presents a dilemma for the Directorate, because it is unclear whether a 13-year old testimonial pertaining to a grade 1 and grade 6 learner remain relevant and applicable to typical user-experience today. In addition, the Advertiser appears to deny any suggestion that the commercial attempts to leverage one mother's experience in a manner that suggests general efficacy.

The provisions of Clause 10.3 of Section II are therefore particularly significant. The advertiser's scripted testimonial communicates its product efficacy as a "before Bio-Strath" and "after Bio-Strath" success story. It clearly explains that, prior to learning of Bio-Strath, "School was always a fight", and that reliance on help from "Tutors, teachers, diet" proved unsuccessful (as noted earlier, however, the actual testimonial makes no reference to having relied on tutors, teachers or dietary changes). It pertinently states that once the child started using Bio-Strath, he "changed" and that his confidence was boosted. This is used to tie up with the initial claim that using Bio-Strath resulted in an increase of 30% in the child's marks at school.

The scripted testimonial also includes mention of the fact that the entire family now uses Bio-Strath (another statement which does not appear in the actual testimonial). Clearly, the intended communication is that Bio-Strath brought about significant academic and scholastic improvement, and that the entire family stands to benefit from using Bio-Strath. This is how a reasonable person is likely to interpret the commercial's intended message. Effectively, this mother's testimonial is presented as an emotional user-story which might apply to other consumers as well.

The question then arises as to whether the Advertiser holds adequate substantiation for the implied efficacy claims, particularly insofar as they relate to academic performance.

Clause 4.1 of Section II stipulates, *inter alia*, that advertisers should hold adequate evidence of any direct or implied efficacy claims. It adds that such evidence must be up to date and current, and must either emanate from, or be evaluated by an independent and credible expert in the field to which the claims relate.

The Advertiser provided extensive lists of what appear to be journal articles and research reports in support of its claim that the product has been proven to benefit consumers. It is noted that the Directorate was unable to access some of these documents using the titles or URLs provided by the Advertiser. However, some of these articles are summarised on the Advertiser's website at <https://bio-strath.co.za/products/#research>, while others were available at <https://www.stangest.com/wp-content/uploads/2018/01/Research-on-Bio-Strath-products.pdf>. It is also worth noting that some of these documents date back as far as the late 1960's, 1970's and 1980's.

In addition, some of the article titles suggest that they have nothing to do with academic performance of school learners. Examples include, *inter alia*, "The effects of 3 food supplements on feeding and growth rate in the rat", "Supportive treatment with a herbal yeast preparation in oncologic systemic therapy", "Hemoglobin values during pregnancy – observation on the effect of herbal yeast preparation Bio-Strath on the hemoglobin levels of pregnant women", "The effect of 30 day treatment with a herbal yeast food supplement (Bio-Strath) on infection resistance in old mice", "Pre-Alzheimer-study – Action of herbal yeast preparation (Bio-Strath) in a randomised double-blind trial" and "Effects of a herbal yeast preparation in convalescent patients". These studies appeared to be irrelevant for the purpose of proving efficacy insofar as academic performance at school was concerned.

There are other studies which appear to relate to, *inter alia*, increased concentration at school and the tolerance and efficacy of Bio-Strath in school children. However, the Directorate is not in a position to interpret these and determine whether the suggestion that taking Bio-Strath might lead to a substantial improvement in academic performance was realistically possible, or representative of likely consumer experience. Some of these studies appear to have been conducted exclusively on ADHD children, and/or children with special needs, whereas no such limitation was communicated in the commercial message. Findings also tend to relate to behavioural aspects such as disruptive behaviour in class, learner fatigue, attentiveness, concentration, nervousness and physical capacity,

whereas actual scholastic performance in the form of higher marks is generally not discussed.

One document, titled “Increased concentration – Improved performance at school” reports the findings of a school trial, and notes improved academic performance, which is attributed to Bio-Strath. However, the study was conducted more than 50 years ago, and involved 24 volunteers (14-year old girls). According to information on <http://www.mmnetwork.com.my/iqcontest/research.html> (a Malaysian distributor, where Bio-Strath retails under the brand name “Strath”), the author of this trial, M Neukomm, was a secondary school teacher. It is therefore questionable whether any significance should be attributed to the findings of this trial.

While the Advertiser noted that its product formulation has remained unchanged for the past 58 years, the same cannot be said for South Africa’s education system, which has undergone dramatic changes to curriculum, teaching methodology, and reliance on additional resources such as the internet – all of which could conceivably have had dramatic impact on general academic performance. This adds uncertainty as to the relevance of a trial conducted by a high school teacher in 1968 on 24 German schoolgirls.

This is exactly why Clause 4.1 of Section II requires advertisers to provide verification from an independent and credible expert entity. The Directorate does not have the capacity to determine whether any of the studies referred to by the Advertiser are automatically applicable to school learners, whether the findings from these studies necessarily translate to improved academic performance, and whether the research was of such quality that any generalisation to the broader public would be justifiable.

The general tone of the commercial suggests a definite improvement in academic performance, something which could allegedly not be achieved despite reliance on tutors, assistance from teachers and dietary changes. As noted earlier, reasonable consumers would understand that their children are not guaranteed an improvement of exactly 30%. However, the claimed improvement is significant, and is attributed solely to the consumption of Bio-Strath. Consumers are therefore likely to expect similar results when encouraging their children to use this product.

The Advertiser has not, however, provided verification from an independent source that such effects are unequivocally proven by the various documents and articles to which the Advertiser refers. Similarly, the Advertiser has not dealt with the discrepancies between the actual testimonial and its scripted version in the commercial. It has also not dealt with the fact that many of the research papers relied on are more than 30 years old and appear to relate to issues that have nothing to do with scholastic performance.

In the absence of unequivocal verification from an independent and credible entity, the Directorate cannot accept that the implied efficacy has been substantiated within the meaning of Clause 4.1 of Section II of the Code, and the testimonial is therefore in breach of Clause 10 of Section II.

Clause 4.2.1 of Section II prohibits advertising that deceives or misleads by means of exaggeration or inaccuracies.

Because the commercial appears to create unsubstantiated expectations about the effect this product is likely to have on the scholastic performance of children, it is reasonable to argue that the commercial creates a misleading impression with listeners.

The commercial is therefore also found to be misleading, and in contravention of Clause 4.2.1 of Section II of the Code.

Sanction

The Advertiser is requested to remove the advertising in its current format within the deadlines stipulated by Clause 15.3 of the Procedural Guide. In the case of television and radio advertising, this is immediately as deadlines permit.

Members of the ARB are advised not to accept advertising suggesting improvement in academic performance at school as a consequence of using Bio-Strath.