

## Decision of the ADVERTISING REGULATORY BOARD

Complainant	Sithabile Ntshela
Advertiser	Reckitt Benckiser Pharmaceuticals (Pty) Ltd
Consumer/Competitor	Consumer
File reference	Durex – Sithabile Ntshela
Outcome	Dismissed
Date	20 May 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint by Sithabile Ntshela against Durex Fetherlite Condoms' packaging.

### Description of the advertising

The packaging in dispute is:



## Complaint

The Complainant submitted that the advertising is highly inappropriate as children of any age can see/ read it and “get the wrong idea”. Parents should have a choice of when and how they inform their children about the subject of sex.

## Response

The Advertiser submitted that it is not a member of the Advertising Regulatory Board and do not submit itself to the jurisdiction of the ARB. However, it responded to the complaint in good faith to address the concerns raised by the Complainant.

The specific Durex Artwork forms part of a greater #OwnYourSituation Durex campaign. The Campaign’s purpose is to educate the public on matters that relate to safe sex through fun, relevant and informative videos in order to break down the social stigma surrounding sex. The campaign formed part of a Durex Valentine’s Day promotion. As a result, some product in limited number is still to be found in the general trade; however the Advertiser expects that the product will be sold out shortly.

It is apparent from the Artwork and the Tagline that there is no direct or indirect effort on Advertiser’s part to infringe on the role of a parent. The Artwork contains no nudity, graphic, obscene or pornographic images. Merely the sentence “sex is fun”. The Artwork is not created in a provocative or offensive way and the small font size used in the sentence “sex is fun” in comparison to the general size of the Durex box is of such nature, that in its view, it is neither over dramatized nor offensive. The reasonable consumer who views this in store will not find the Artwork as objectionable, nor that it will cause harm to children (especially children of a reading age).

Children of a very young age will and should be accompanied by parents who may educate their children on sex when they feel that the time is fitting, however for the

public in general the need for contraceptives is a matter of public interest, particularly so in South Africa where there is a high prevalence of HIV. The Artwork does moreover not contravene any law and its marketing initiative is certainly not directed at any minors. Minors are not the target market for any of its products especially not its Durex products.

It is common (and in fact a government initiative) to find condoms in schools (including elementary schools) in South Africa. Considering this, it is perplexing that parents should take issue with non-pornographic condom packaging. There has been no scientific proof to back up the claim that the sale of condoms (or non-pornographic condom adverts) promotes promiscuity. In fact, an argument can equally be made in favour of the advantages of safe sex education in early childhood. This point is amplified in the Children's Act, 2005 and Sexual Offences Related Matters Amendment Act, 2007 where it is held that adolescents above the age of 12 can have access to contraceptives and HIV testing without the need for parental approval.

## Application of the Code of Advertising Practice

The following clause was considered in this matter:

### **Children – Clause 14 of Section II**

## Decision

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

### Jurisdiction

The Advertiser submitted that it is not a member of the ARB.

Clause 3.3 of the Memorandum of Incorporation of the ARB provides that “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 non-member 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”

The Directorate will therefore proceed to consider this matter for the benefit of its members.

### Merits

The essential question in this matter, in terms of the Code, is whether the messaging “Sex is fun” is harmful to children.

The Complainant submits two things in essence:

- That children could get “the wrong idea”
- That parents have a right to have conversations about sex in their own time.

The Directorate notes that this matter has challenged it, and the issues at play are complicated. The decision of the Directorate is not unanimous.

The Directorate agrees with the Advertiser that its packaging does not show graphic, obscene or pornographic material or images and its product is not targeted at children. The Directorate also agrees that children below reading age will not suffer any harm from seeing the packaging. In addition, it is true that children over 12 are exposed to safe sex messages and usually have basic sex education offered to

them. The Advertiser argued, for example, correctly so, that laws allow children of 12 years and over to access contraceptives and HIV testing without parental consent.

The potential problem for the Directorate lies with those children that can read, but are still young enough that they will not necessarily have been exposed to appropriate sex education – which covers the age group from about 6 to 11. This is also a group whose eyes might be drawn by the “text bubble” presentation as well as the accompanying emoji.

The question is whether the message “sex is fun” on the Durex packaging at the till points might harm this group.

Clause 14.1 of Section II states that the “General Principle” is that “Advertisements addressed to or likely to influence children should not contain any statement or visual presentation that might result in harming them, mentally, morally, physically or emotionally.” The Code then clarifies that:

“The aim of the general principle is:

- that children should not be brought under the impression that it is acceptable and safe to be in certain surroundings; and
- that the depiction of a particular activity or circumstances in such a way would not have the likely effect that children would attempt to emulate it with the concomitant risk of physical, moral or mental harm or that the impression is created that it is acceptable to act in a certain manner.” (our emphasis)

The Directorate recognises that “sex is fun” messaging is an important part of the safe sex conversation and education around adult sexuality. In addition, it is perhaps a message that is often lost in the sex education done with children. However, for a child in the age group identified, it might be somewhat confusing and out-of-context. The word “fun” is one that this age group would associate with toys, games and appropriate activities. The message might therefore create some confusion as to the age appropriateness of sex as a fun activity.

The Directorate also accepts that the message could be an important spring board for a conversation about safe sex; but only if the parent is aware that the child has seen it – which would not be the case in the current situation. This is not a big billboard, or a television advertisement at a time when a parent would also be watching, but a small package that the child may notice and read without drawing the parent’s attention to it.

When talking about children, an important part of the “sex is fun” messaging is to make the child understand that sex is fun in a particular context, at a suitable age, and with appropriate protection depending on the situation. A younger child who simply sees the messaging may understand that sex is fun at any given time and manner. This is not ideal messaging for children that age.

However, the fact that it is not ideal is not in itself a reason for the Directorate to pull an advertisement. The question is whether the communication results in the type of harm that is identified by the Code. The Directorate is only mandated to act in terms of the Code.

The real question is therefore whether the messaging “sex is fun” on a Durex package seen in a shop is going to make a child who would otherwise not have had any inclination to have under-age sex, to decide that because sex is fun, they will give it a try. The Directorate does not believe this to be the case. The Directorate recognises that it *might* aggravate other problems. A child with unfettered access to the internet might have discovered a new search term, a child who is being abused might become even more confused and ashamed – but these are all situations where other factors are at play, and where any number of things that children are exposed to might trigger additional harm.

The reality is that we live in a society where children are exposed to more, younger. The temptation is to clamp down, to protect children at all costs, and for a body such as the ARB to err on the side of caution in a matter like this.

However, the Directorate concludes that the harm that the actual packaging – which is not aimed at children – would do is not the harm envisaged by the Code. A child who is otherwise not at risk would not, on the reading of the packaging, decide to have sex.

**In the circumstances, the Directorate finds that the message displayed on the Durex packaging while not ideal, is not in contravention of Clause 14 of Section II of the Code of Advertising Practice.**