

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Ntombi Silomntu
Advertiser	African Extracts
Consumer/Competitor	Consumer
File reference	411 – African Extracts – Ntombi Silomntu
Outcome	Dismissed
Date	17 October 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Ntombi Silomntu against the packaging of African Extracts Rooibos 3-in-1 product.

Description of the advertising

The packaging states: “WASH, SCRUB & MASK”.

Complaint

In essence, the Complainant submits that the advertised product does not wash as advertised. She states that it does not wash, and is “mud as in Mask, and nothing else”.

Response

The Advertiser responded and stated, *inter alia*, that:

- The “Directions for use” that the Complainant attached to her complaint are not advertising;
- The ARB is beyond its mandate;
- The complaint is motivated by malice;
- The product can be checked by using it.

The Advertiser also submitted the following on the merits, *inter alia*:

- It examined the retained samples in stock and found no product fault in any way from a quality point of view. The batch in question contained 4 000 products approximately. No other customer complaints have been received.
- All products in the African Extracts range are specifically developed and formulated to meet quality and regulatory Cosmetic standard guidelines Regulation (EC) 1223/2009) The various standards and testing that are conducted, both internally and by external laboratories, include:
 - Stability testing
 - Compatibility testing
 - Challenge testing – Measured for *Pseudomonas aeruginosa*, *Staphylococcus aureus*, *Candida, albicans*, *Aspergillus brasiliensis*, *E. coli*
 - Assessment of IFRA Certificates according to the 48th amendment for essential oils and fragrances.
 - Allergens list with calculated % and declaration thereof on the packaging
 - Data on any reported undesirable effects associated with the use of the product.
- The definition of a wash means something containing a cleansing agent to cleanse; typically, soap is used to perform this function. The formulation contains a sufficient amount of soap/detergent as legally permitted by the cosmetic regulation (Regulation (EC) 1223/2009), thus satisfying the criteria of a wash (cleansing product). This is stipulated in the ingredients on the packaging as Sodium Laureth Sulphate and Cocamidopropyl Betaine. Both these ingredients are widely used in the cosmetic and personal care industry as the main cleansing ingredient for formulations such as washes, shampoos and tooth paste.

The Advertiser also provided a sample of the product.

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.

The Directorate starts by noting that the definition of advertising in the Code, and therefore the scope of its mandate, is as follows in Clause 4.1 of Section I:

“Advertisement” means any visual or aural communication, representation, reference or notification of any kind

4.1.1 which is intended to promote the sale, leasing or use of any goods or services;
or

4.1.2 which appeals for or promotes the support of any cause. Promotional content of display material, menus, labels and packaging also fall within the definition. Editorial material is not an advertisement, unless it is editorial for which consideration has been given or received.

The word “advertisement” applies to published advertising wherever it may appear. It does not apply to editorial or programming publicity.

Claims made on packaging fall squarely into this definition, and as such, the ARB has a mandate to consider same.

The only claim that is under consideration is “WASH, SCRAB & MASK” and the only complaint that is raised is that the product does not wash and is mud-like, as befits only a mask.

The Directorate starts by noting the submissions made by the Advertiser around the ingredients of the product. The Advertiser indicates that the cleansing ingredients of the product are Sodium Laureth Sulphate and Cocamidopropyl Betaine.

According to Wikipedia, Sodium Laureth Sulphate:

“is an anionic detergent and surfactant found in many personal care products (soaps, shampoos, toothpaste, etc.). SLES is an inexpensive and very effective foaming agent.[1] SLES, sodium lauryl sulfate (SLS), ammonium lauryl sulfate (ALS), and sodium pareth sulfate are surfactants that are used in many cosmetic products for their cleaning and emulsifying properties. They behave similarly to soap. It is derived from palm kernel oil or coconut oil.”

Wikipedia also provides that:

“Cocamidopropyl betaine (CAPB) is a mixture of closely related organic compounds derived from coconut oil and dimethylaminopropylamine.[1] CAPB is available as a viscous pale yellow solution and it is used as a surfactant in personal care products. The name reflects that the major part of the molecule, the lauric acid group, is derived from coconut oil.”

It therefore does appear that these are cleansing agents.

The Directorate also had regard to the sample provided. It notes that the substance is certainly not mud-like. The Directorate accepts, in assessing the sample, that the hypothetical reasonable consumer will understand that a 3-in-1 product cannot possibly have the same characteristics as a pure wash, or pure scrub, or pure mask. In attaining all 3 functions in one product, certain “typical” characteristics will be lost. The product is certainly thicker than some cleansers, but it is not inconsistent with the function of cleansing. A member of the Directorate then tried the sample, and found that the product does indeed remove dirt and make-up from the skin, as would be expected from a “wash”.

Given the ingredients, and given the characteristics of the actual product, the Directorate finds that the claim “wash” is not misleading and therefore not in breach of Clause 4.2.1 of Section II.