

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Paul Noppe
Advertiser	Pioneer Food Group Limited
Consumer/Competitor	Consumer
File reference	Bokomo Rusks – Paul Noppe
Outcome	Dismiss
Date	5 July 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Paul Noppe against the new packaging for Bokomo Rusks.

Description of the advertising

The packaging of the new Multigrain and Raisin rusk variant states “400g” on the front package.

The packaging of the new Condensed Milk variant states 450g on the side of the pack.

The following visual assisted the Directorate:



Complaint

In essence, the Complainant submits that most Bokomo Rusk variants are 500g and state this on the front of pack. This makes the following misleading:

- The Multigrain and Raisin variant is only 400g, despite being in the same size box, which is misleading;
- The Condensed Milk variant is only 450g, and this is hidden at the side of the box. Consumers will presume it is the same as the standard variants.

Response

The Advertiser initially submitted that:

- It is not a member of the ARB or bound by the decisions of the ARB;
- It has communicated with the Complainant.

The Advertiser subsequently responded on the merits. It addressed a number of issues that the complainant raised with it. For the purposes of the complaint raised with the ARB, it noted:

- The weight of the Condensed Milk variant will be moved to the front of the pack in the next print run;
- It is industry norm to have the same size packs across rusk variants and weights.

Application of the Code of Advertising Practice

The following clauses were considered in this matter:

Honesty – Clause 2 of Section II

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 Directorate notes that the Advertiser is a member of MASA. MASA is a founding member of the ARB. The Memorandum of Incorporation of the ARB states:

“The members of the Company declare that:

...

3.2.3 They regard themselves as bound by, and undertake to bind their members, to the jurisdiction of the Company and the provisions of the Code of Advertising Practice. For the avoidance of doubt, the members acknowledge that any reference in the Advertising Code of Practice to the Advertising Standards Authority will be read as if it refers to the Company, *mutatis mutandis*.”

The MOI in any event goes on to state that:

“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 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.”

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

Merits

The Directorate starts by noting that Advertisers are obliged by law to reflect the correct weight of a product on that product packaging. The Directorate will accept for the purposes of this decision that all the weights reflected are indeed correct.

In its correspondence to the Complainant, the Advertiser explained the reason for the weight variations across the range. This is because the Advertiser chooses to give shopping convenience by keeping the price across the range the same – but some ingredients are obviously more expensive than others. This therefore results in different amounts of product across the range.

The only question before the Directorate is whether the consumer is misled as to what they can expect from the packaging.

The Directorate has carefully considered the two situations before it.

In the case of the Multigrain & Raisin variant, the weight of 400g appears on the front of the packaging. It is true that the box is the same size as those that carry 500g of rusks, and that it appears that 500g is the “standard” Bokomo rusk box size. However, the weight of 400g is clearly communicated on the front of the pack. The consumer will not in any way be unaware of the weight or misled as to what they are receiving.

The packaging of the Multigrain & Raisin variant is therefore not in breach of Clause 2 or 4.2.1 of Section II.

The situation with the Condensed Milk variant is slightly different. In this case, the weight is no longer in the standard positioning on the front of the pack, but rather on

the side of the pack. However, the Advertiser has undertaken to move the weight information to the front of the pack.

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 has amended the advertising in a manner that appears to address the complaint at hand.

The ARB Directorate is satisfied that the amendment by the Advertiser is unequivocal and addresses the complaint before it, and that it will be affected within the 3 month deadlines stipulated by the Code for packaging, and therefore accepts this undertaking in resolution of the matter.