

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Dr Harris Steinman
Advertiser	Henties Juices Cape CC
Consumer/Competitor	Consumer
File reference	454 – Henties Orange Juice - Steinman
Outcome	Dismissed
Date	14 October 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Dr Steinman against the packaging for Henties' Orange juice.

Description of the advertising

The packaging carries a "100%" circular logo adjacent to an image of oranges and the Advertiser's logo. Below this, the words "100% Orange Juice Blend" and "Orange, Apple, and/or Pear" appear. The ingredients listed on the label are "Orange Juice, Apple and/or pear juice, Water, Flavours, Citric acid, Preservatives: Potassium sorbate, Sodium benzoate".

Below are images submitted by the Complainant:



Complaint

The Complainant argued that the reference to being a “100% Orange Juice Blend” was misleading because the labelling “induces consumers to purchase a product that in fact also includes water, flavours, citric acid and preservatives”.

Response

The Advertiser submitted that its labels complied with all applicable legislation and compulsory standards within South Africa, as well as the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972). It briefly outlined the relevant requirements in terms of Regulation 286 (Regulations relating to the classification, packing and marking of fruit juice and drink intended for sale in the republic of South Africa), emphasising that all mandatory conditions that apply to unsweetened citrus juice and blended fruit juice products have been met. These mandatory conditions allow for the inclusion of preservatives and additives.

Application of the Code of Advertising Practice

The Directorate considered Clause 4.2.1 of Section II (Misleading claims) to be relevant.

Decision

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

As an opening comment, the ARB notes that:

- This is not a complaint regarding a regulation;
- The ARB is not, in any event, mandated to consider whether a matter breaches a regulation;
- That said, the ARB can also not make a decision that forces the Advertiser to breach a regulation;
- Nor can it make a decision that contradicts the position created by the regulation.

The only question before the Directorate is whether the claim is misleading in terms of Clause 4.2.1 of Section II. In considering this, however, the Directorate cannot be blind to the surrounding regulations.

Clause 4.2.1 of Section II prohibits advertising claims which are likely to mislead by means of ambiguity, omission, exaggeration or otherwise.

The Complainant argued that consumers are being deceived into purchasing “100% Orange Juice Blend” which also contains water, flavours, citric acid and preservatives. While this was not spelled out in the complaint, it appears that the Complainant’s concerns relate to the “100%” portion of the claim. The Complainant appears to be of the view that the presence of flavours, citric acid and preservatives invalidates the “100%” claim.

The Advertiser has not addressed the reference to “100%” *per se*, but submitted that its product complied with applicable legislative requirements and recommendations, which allow manufacturers to add, *inter alia*, preservatives, citric acid and flavouring within predefined quantity levels. The Advertiser also submitted extracts from Regulation 286 relating to the classification, packing and marking of fruit juice and drink intended for sale in the republic of South Africa. These extracts show, *inter alia*, the following:

- “Fresh” citrus juices are not permitted to contain any additives or be subjected to any processing other than chilling. Such juices are intended for consumption within two hours of extraction. These provisions clearly do not apply to the product in question, which is neither sold nor marketed as “fresh”.

- “Unsweetened” citrus juices (the category to which the Advertiser’s product is reported to belong) may contain, *inter alia*, permitted preservatives, ascorbic and citric acid, and carbon dioxide.
- “Blended” fruit juices (also a category to which the Advertiser appears to belong) must include reference to the fact that the product consists of a blend of different juices. The fact that the Advertiser’s product is a blended juice is clearly displayed on its label, and has not been raised as a concern by the Complainant.

These submissions suggest that the Advertiser is entitled to include preservatives and citric acid in its product, and market it as a blended fruit juice. They do not, however, speak directly to whether or not the term “100%” is permissible.

To obtain additional clarity in this regard, the Directorate turned to information contained on the South African Fruit Juice Association’s (“SAFJA”) website www.safja.co.za. This organisation describes itself as a “voluntary body representing the processing and packaging companies that produce fruit juice concentrates, pulps and purees and ready-to-drink fruit juices, nectars and drinks for local consumption and the export market”. SAFJA states that it engages regularly with various Government departments such as the Department of Agriculture, Forestry and Fisheries, the Department of Health and the Department of Trade and Industries. Its Frequently Asked Questions page includes a discussion under the heading “What is 100% juice”, which reads as follows:

“In terms of the South African legislation, a 100% juice will consist of the natural juice of the named fruit(s), with the possibility of permitted preservatives, citric acid, ascorbic acid, carbon dioxide, natural essences / aromas. It does not contain added sugars derived from any other source i.e. sugar beet / cane, invert sugar etc.”

This appears to corroborate the Advertiser’s submissions that the presence of preservatives, citric acids and flavours do not invalidate the claim “100%” insofar as its “blend” is concerned.

While the decisions of the Advertising Standards Authority are not necessarily binding on the ARB, they nonetheless represent a large body of knowledge, and also the status quo as understood by marketers and consumers. Turning to earlier ASA rulings on issues of this nature, it is interesting to note that the National Department of Agriculture appears to allow for “100%” claims when preservatives, colourants and acidifying agents and ascorbic acids are present.

In Fruitime Red Grape Juice / Mr R Smith / 4982 (13 March 2003), the Department was asked for its views on a “100% Pure Grape Juice” product which contained preservatives, colourants and other additives. At the time, the complainant was of the view that these ingredients invalidated the claim “100% Pure Grape Juice”. The Department confirmed that the claim was compliant with, *inter alia*, Regulation 286 despite the presence of, *inter alia*, colourants, flavours, Vitamin C, Malic Acid, Sodium Benzoate, Potassium Sorbate, Pimaricin and water.

In Skweez Cranberry Juice / S Wylie / 9922 (11 December 2007), the ASA was asked to consider whether the presence of preservatives or colourants in a fruit juice would negate the claim “100% CRANBERRY JUICE”. Here too the ASA was guided by an opinion from the Department of Agriculture, and ultimately ruled that:

“The hypothetical reasonable person would understand that in order to prolong shelf life of the juice, certain preservatives are needed. From the [Department’s] opinion it appears that the respondent’s ingredients fall within allowed levels that do not detract from the ‘100%’ juice quality”.

While the ARB is entitled to forge new paths and approaches, it cannot simply ignore such precedents, particularly given the tacit endorsements obtained from the Department of Agriculture. These older ASA rulings appear to suggest that the presence of, *inter alia*, water, citric acid, preservatives and flavours would not invalidate a claim that the juice was “100%” juice, provided these ingredients do not exceed certain levels (which has not been suggested). It is also recognised that the product is not marketed as a “fresh” juice product, which indirectly justifies the use of preservatives in order to prolong shelf-life.

The Directorate also notes that given that the product meets the definition of “blended juice”; it is technically true to say that it must be “100% blended juice” – there is no part of it that does not meet the definition of blended juice. In this sense, it is grammatically correct. This, for the Directorate, is persuasive.

The Directorate does have a slight discomfort in that it is not convinced that all consumers would realise that a “100%” claim does *not* imply that there are no preservatives or additives. The Directorate is also somewhat uncertain as to why or how the inclusion of “100%” came to be standard industry practice despite the inclusion of additives. Certainly, we would be more comfortable with a disclaimer stating “with additives” or an asterisk referencing the ingredient list.

Nonetheless, the Directorate has to accept that the reference to being “100%” juice appears to comply with legislation, appears to be endorsed by the National Department of Agriculture, and appears to remain valid even if preservatives, flavours and certain types of acids are added to the product. More importantly, it appears to be industry norm, and as such consumers would expect it. It also does make grammatical sense, as outlined above.

Given these factors, it would be unreasonable for the Directorate to find that such claims are misleading in a manner envisaged by Clause 4.2.1 of Section II of the Code.