

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Bradley Wilson
Advertiser	Kellogg Company of South Africa (Pty) Ltd
Consumer/Competitor	Consumer Complaint
File reference	Kelloggs – Bradley Wilson - 08-11-18
Outcome	Dismissed the complaint.
Date	6 December 2018

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Mr Wilson against the packaging of Kellogg’s Rice Krispies.

Description of the advertising

The new packaging of Kellogg’s Rice Krispies contains the following claims:

- The front of the packaging has the product’s name “Kellogg’s Rice Krispies” and the words “Puffed Multigrain cereal”.

- At the bottom of the front packaging there is a banner which reads “NEW AND IMPROVED VANILLA FLAVOUR; made with multigrain; source of 9 vitamins & iron; no artificial colourant and flavourings; supports growth & development.”
- On the back of the packaging the following claims appear under the ingredients list “Rice flour (48%), *corn flour (13%), crushed whole wheat flour (10%) (Gluten), sugar, salt. . .” and under the allergens list it is stated “contains wheat (gluten). . .”

Complaint

The Complainant alleged that the respondent has completely changed its recipe for Rice Krispies breakfast cereal. He explained that the product was previously 89% puffed rice, but now it’s only 49%. He further submitted that the product contains double the amount of sugar. The Complainant also took issue with the small disclaimer used on the front of the box, arguing that it is not sufficient in making consumers aware of the changes made to the original product.

He also argued that the inclusion of multigrain is a health hazard for anyone who is wheat or corn intolerant, as the original recipe could be tolerated by people with a gluten or wheat intolerance. Furthermore, he argued that the original product could be enjoyed by diabetics, but now has additional sugar the product can no longer be said to be the same as it was previously.

Finally, the Complaint took issue with the name “RICE” Krispies, arguing that it is false as the product does not consist primarily of rice.

Response

The Respondent denied the Complainant’s allegations without submitting to the jurisdiction of the ARB. However, given the variety of issues addressed by the Respondent in its submissions, and for practicality reasons, the summary of the response shall be included in the actual Ruling.

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.

Jurisdiction

The Directorate notes that the Advertiser does not submit to the jurisdiction of the ARB, but has co-operated fully in supplying a response.

For the purposes of clarity the Directorate notes that Clause 3.3 of the Memorandum of Incorporation of the ARB states:

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 matter will therefore be considered for the guidance of the members of the ARB. It remains the Advertiser's prerogative whether or not it submits itself to the decision.

Merits

Clause 4.2.1 of Section II of the Code deals states, *inter alia*, “Advertisements should not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer.”

The reformulation of the product

The complainant first took issue with the new product formulation and the changes made on the packaging to inform the consumers of the changes. He argued that the product now has multigrain and added sugar, which means it can no longer be consumed safely by those with gluten or corn intolerance and diabetes as it “is a health hazard”.

In response, the Respondent denied all the allegations and submitted that the complaint be dismissed. With regards to the “health hazard” allegation, it submitted that it does not intend to provide a medical response to the Reformulation Complaint, but at no point has Kellogg positioned the Product as suitable for persons with diabetes. Furthermore, the Respondent submitted that the previous formulation of the Product also contained gluten and sugar (albeit at lower levels compared to the Reformulation); and that the allergen of gluten (originating from barley) was clearly stipulated on the packaging of the previous version of the Product. The Respondent emphasised that the wheat or gluten allergens are clearly marked on the label of the Product, as is required in terms of regulations 42 and 43 of the Regulations: Labelling and Advertising of Foodstuffs (GNR. 146 of 1 March 2010), as published in terms of the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972.

The Directorate assessed the packaging, in light of the complaint, and noted that the front of the packaging clearly states that the product is a “Puffed Multigrain cereal” where the previous packaging read “oven toasted grains of rice”. In addition, the word “new” appears on the bottom front of the pack in a large font and the consumer’s eye is drawn to it. Next to this, the packaging again states “made with multigrain”.

In addition to this, the back of the packaging indicates that the ingredients making up the product includes “Rice flour (48%), *corn flour (13%), crushed whole wheat flour (10%) (Gluten), sugar...” Furthermore, the allergens are clearly stated on the new packaging “Contains wheat (gluten)”, which was similarly indicated on the copy of the old packaging submitted by the Respondent.

In the first place, the hypothetical reasonable consumer with special dietary needs is clearly and unambiguously informed that this is a “NEW” formulation and that it is “multigrain”. A hypothetical reasonable consumer with special dietary needs would therefore consult the ingredient list to determine whether the product still met their needs or not.

In addition, it is noted that the original product was suitable for neither diabetics nor those with gluten intolerance, the two conditions highlighted by the Complainant. In fact, gluten is identified as an allergen on the original product as well as on the new product. There is therefore no reasonable basis to conclude that diabetics and gluten-intolerant people were previously eating the product, and would now be misled and harmed. As stated before, those who were indeed previously tolerating the product would be sufficiently alerted by the packaging to the fact that the formulation has changed.

As such, this aspect of the complaint is dismissed.

The product name “Rice Krispies”

The Complainant submitted that name “Rice Krispies” is false as the product does not consist primarily of rice.

In response, it was submitted that the ingredients list of the reformulated Product comply with the regulation 26 of the Labelling Regulations specifically make reference to the concept of quantitative ingredient declarations (“QUID”). The Respondent argued that the percentages of the amount of rice flour, corn flour and crushed whole wheat flour are all clearly indicated on the ingredients list.

The key question before the Directorate is whether or not the advertisement in question is likely to mislead consumers as to the key ingredient of the product. In other words, will the consumer believe that because the product is called “Rice Krispies” it is only made of rice, when in fact it is now a multi-grain cereal?

It has been stated previously that the fact that the product has been reformulated is communicated clearly throughout the new packaging. The hypothetical reasonable consumer will be aware that the product is reformulated, and that it is now a multigrain cereal.

The Directorate also notes that Rice Krispies is a well-established brand. According to Wikipedia, the product was released under this name in 1928. Consumers therefore have a whole host of expectations and knowledge when they approach the product – a certain look and feel, a certain taste profile, and a certain emotional connotation. The word “Rice” therefore does not have the same import that it might have with a new product on the market. Rather, the term “Rice Krispies” creates certain expectations in totality. Given this, in conjunction with the clear communication that the formulation has changed, the Directorate does not consider that the hypothetical reasonable consumer would expect the product to be made primarily of rice.

In addition, as is indicated on the ingredients list, 48% of the product is still made up of Rice flour, making it the primary ingredient.

It is in this context that the Directorate finds that the communication of the packaging is not misleading or in contravention of Clause 4.2.1 of the Code as alleged by the Complainant.