

## Decision of the ADVERTISING REGULATORY BOARD

Complainant	Prudential Investment Managers (South Africa) (Pty) Ltd
Advertiser	10X Investments (Pty) Ltd
Consumer/Competitor	Competitor
File reference	10X Investments - Prudential
Outcome	Upheld
Date	6 August 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a competitor complaint lodged by Prudential Investment Managers against advertising for 10X Investments.

### Description of the advertising

The banner advertising states:

“Numbers don’t lie. But your fund manager might.”

The social media advertising is in the form of a video, showing the CEO of 10X Investments taking a lie detector test. At the end he says, “Would the CEO in charge of your retirement fund take a test like this?”

## Complaint

In essence, the Complainant submits that the advertising is disparaging and not based on any facts that can be substantiated.

The implication of the video is that all other retirement fund CEOs lie.

## Response

The Advertiser responded. It started out by setting out the advantages of the product that it offers in some detail, and then submitted, *inter alia*, that:

- As a piece of communication, there is no indication or expression in the copy on the banner that suggests “all” fund managers lie. The language is purely conditional, and therefore true, unless there is some kind of verifiable, global proof that shows no fund manager has ever lied.
- Research carried out by New York University’s Stern School of Business supports why fund managers (again, not “all” fund managers) have unfortunately earned a certain reputation: <https://www.businessinsider.com/hedge-fund-managers-lie-2009-10?IR=T>
- There are any number of instances in the public domain where fund managers around the world have been shown to behave less than ethically.
- Passive funds, such as managed by 10X, are designed to track the Index. The company does not employ fund managers. Therefore, as a 10X client, you won’t be lied to by any fund manager.
- The banner merely points out the obvious, and plays into already-established perceptions: that “numbers” are objective, obviating the need for the subjective input of fund managers.
- Similarly, it’s generally understood that by using the platform of “consistency” to promote their investment approach, Prudential is not accusing all other FSPs of being inconsistent.
- The intent of the video is, again, to challenge the status quo in the financial services industry. Few FSPs have a clear-cut USP that they’re able to promote, often using narrative devices and metaphors as creative devices in their communications, where 10X is able to demonstrate its advantages with objective maths.

- The video sets out to amplify 10X's unique propositions – lower fees, which in turn enable its customers to retire with more money when the time comes.
- Mr Nathan ends the video with a simple question: “Would the CEO of your retirement company take a test like this?” The answer to this could well be “yes”. This is a simple challenge, not a categorical statement that other CEOs are liars.
- This challenge is no different in intent to the challenge issued by Checkers in their repositioning five years ago: “Don't change your lifestyle, change your supermarket.” Just as Checkers leveraged its competitive advantage over other supermarket chains in order to attract customers to their stores, so 10X uses ownable and verifiable propositions to attract investors to its doors.
- There is no direct attack on another product or service, i.e. Prudential's: the issues touched on in the work merely reiterate industry debate and discussion that already exists in the public domain, and no brand or advertiser is directly disparaged, or individually compared to 10X.
- It posits that the work in question, instead, sets out to do exactly what the following quoted clause allows. As a challenger in the industry, it is not just the strategy but also the responsibility of 10X to challenge industry failings (high fees and irresponsible investing) – something that is very much in the public interest:
- The assertion that the 10X work referred to by the complainant “could discourage investments and savings by the public in general”, is specious and unfounded conjecture, and draws a conclusion that cannot be extrapolated from the work, or proven as a result of it. If anything, the 10X message will encourage investors to consider index funds over more volatile and expensive managed funds.

## Application of the Code of Advertising Practice

The following clauses were considered in this matter:

Disparagement – Clause 6 of Section II

## Decision

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

Clause 6 of Section II states:

- 6.1 Advertisements should not attack, discredit or disparage other products, services, advertisers or advertisements directly or indirectly.
- 6.2 Comparisons highlighting a weakness in an industry or product will not necessarily be regarded as disparaging when the information is factual and in the public interest.
- 6.3 In considering complaints under this Clause, the ASA shall take cognisance of what it considers to be the intention of the advertiser.

The starting point is that the Advertiser is of course entitled to set out the unique benefits of its product. The complaint takes no issue with the portion of the commercial where the CEO of the Advertiser talks about the manner in which the product is structured and the advantages thereof. It takes issue with two claims only:

- On the banner, ““Numbers don’t lie. But your fund manager might.”
- In the commercial, the CEO’s statement, “Would the CEO of your retirement company take a test like this?”

The only question before the Directorate is whether these statements go beyond the scope of “highlighting a weakness in the industry” by going beyond the facts and becoming disparaging.

## **Banner**

The Advertiser has defended the statement in the banner by explaining that it outs a question – “might” – and does not say unequivocally that your fund manager IS lying. It also put forward evidence that fund managers have historically been caught out lying.

The Directorate accepts that it might be seen as an advantage of the product that there is no fund manager. The Advertiser is certainly free to advertise the absence of fund managers. It is also true that fund managers have been known to lie. So have doctors, lawyers, car salespeople and municipal clerks. It cannot be said that fund managers lying is an inherent weakness in the investment industry. Many consumers would also have had good experiences with honest fund managers who were able to guide them in the right

direction. For this reason, the Directorate rejects the argument that this is simply highlighting a weakness in the industry.

It also rejects the argument that the word “might” makes a material difference. In the context of the banner, the implication is that fund managers inevitably lie. This is not founded on any meaningful substantiation, and goes beyond highlighting a weakness in the industry.

The Directorate also notes that the Advertiser could quite effectively have communicated the advantages of not having fund managers without implying that they lie.

**Given this, the claim “Numbers don’t lie. But your fund manager might” on the banner is in breach of Clause 6 of Section II.**

### **Commercial**

The commercial, which was shared on social media, ends with the contested statement, “Would the CEO of your retirement company take a test like this?”

It is true that taken in isolation, this statement could well be, as claimed by the Advertiser, a simple challenge that the consumer should apply their mind to, and not an allegation that the relevant CEO must be lying. However, the Directorate notes that advertising must be considered as a whole and in context.

The opening lines of the commercial are:

“Most retirement companies wouldn’t want you to watch this, for good reason. Because why should the truth get in the way of a good story? Whether it’s a man planting trees besides a river, a kid waiting years for the perfect date or a blind doctor earning the trust of his community, it’s all a distraction, isn’t it?”

This sets up a number of assumptions for the consumer to now take into the commercial:

- Firstly, that some startling truth is being revealed that has been kept from them;
- Secondly, that other companies let a good story get in the way of the truth (i.e. lie).

The Directorate notes that all three examples used in the commercial appear to be examples of a competitor to the Advertiser’s campaigns. The reference to the blind doctor appears to reference a Coronation campaign, the reference to the man planting trees

appears to be a Prudential campaign, and the children waiting for a perfect date might be the Investec “thank me later” campaign. The communication is therefore not that some nameless competitor might at some point have tried to obfuscate the truth, but that very specific advertisers have done so.

It is against this background that the claim “Would the CEO of your retirement company take a test like this?” occurs. While in isolation, the answer to this question might be purely speculative, against the introduction to the commercial, it becomes clear that the implication is that the CEO would not, because, as already explained, he or she is blurring the truth with a good story. And that they do not want the consumer to know the content of this advertisement.

**In this context, the statement in question is disparaging and in breach of Clause 6 of Section II.**

## Sanction

The Advertiser is instructed to withdraw or amend the claims in question within the deadlines set out in Clause 15.3 of the Procedural Guide.

For the avoidance of confusion, it is noted:

- The banner should not be displayed in its current format again;
- Any erected banners should be removed as soon as reasonably possible but within two weeks;
- The YouTube commercial in its current format should be taken down as soon as reasonably possible;
- Any other material carrying the claims in the same context should also be removed (ref Clause 15.5 of the Procedural Guide).