

Decision of the ADVERTISING REGULATORY BOARD

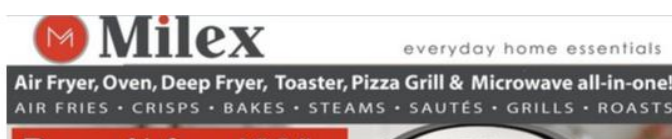
Complainant	Guy Snelling
Advertiser	Homemark
Consumer/Competitor	Consumer
File reference	Homemark – Guy Snelling
Outcome	Upheld
Date	30 September 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Guy Snelling against website advertising for Homemark’s Milex Power AirFryer XXXL.

Description of the advertising

The claim in question is found at <https://homemark.co.za/products/milex-power-airfryer-xxxl>

It states:



Complaint

In essence, the Complainant submits that the advertised product does not have a microwave function. He submitted an extract from the product webpage in support of his argument.

Response

The Advertiser advised that it is not a member of the ARB and is not bound by the ARB's decisions. It is not obliged to furnish a defence and chooses not to do so.

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 Advertiser has submitted that it does not consider itself bound by the ARB and the Code of Advertising Practice.

The Memorandum of Incorporation of the ARB states:

“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 you are not a member and do not submit to the jurisdiction of the ARB, the ARB will consider and rule on your advertising for the guidance of our members.

The ARB will, however, rule on whatever is before it when making a decision for the guidance of its members. This ruling will be binding only on ARB members and on broadcasters in terms of the Electronic Communications Act.

The ARB will therefore proceed to consider this matter for the guidance of its members.

Merits

The complaint in this matter is simple – the Complainant submits that the product does not have a microwave function.

The Advertiser has chosen not to respond to the complaint. This places the Directorate in a position that it is forced to accept the Complainant’s submissions, and it has nothing before it to indicate that the claim is correct.

The Directorate also searched the product and found that the majority of product descriptions for this product do not include “microwave”.

In addition, the Advertiser actually appears to have amended its website, and removed the word “microwave”. As the Advertiser has not proffered this as an undertaking to the

ARB, it cannot be treated as such, but it is arguably indicative that the initial claims may have been incorrect.

In the circumstances, the Directorate finds that the claim “microwave” is misleading and in breach of Clause 4.2.1 of Section II.

Sanction

Members of the ARB are advised not to accept advertising for the Milex Power AirFryer XXL that claims “microwave”.