

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Louis de Bruyn
Advertiser	Bayer (Pty) Ltd
Consumer/Competitor	Consumer
File reference	569 – Monsanto – Louis de Bruyn
Outcome	Dismissed
Date	29 November 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Mr de Bruyn against Bayer's radio commercial heard on Pretoria FM.

Description of the advertising

The commercial was broadcast in Afrikaans. For the purpose of this decision, an English translation was provided by the Advertiser:

"For effective control of weeds as part of your weed control programme, the broad-spectrum Roundup herbicides are the reliable choice for weed management and retention of moisture. With Roundup Turbo and Roundup PowerMAX, quality and results are ensured, and Roundup PowerMAX is also the

safe choice for use on Roundup-Ready crops. Follow the instructions on the label carefully. Contact your nearest Roundup supplier today. Roundup products: so that your crops can reach their full potential".

Complaint

Mr de Bruyn explained that Monsanto has had to pay substantial damages in America, because its products were found to cause cancer, yet it is advertising the product as "safe". He added that all Genetically Modified Organism, or "GMO" Foods are sprayed with Monsanto despite this. Finally, Mr de Bruyn objected to the fact that a deadly product was being advertised on local radio stations and sold in stores.

Response

The Advertiser, represented by attorneys Webber Wentzel, in association with Linklaters, acknowledged that, despite not being a member of the ARB, it wished to address the complaint. It explained that the Monsanto Company was acquired by Bayer AG in 2018, and that Bayer (Pty) Ltd was the operating entity for Bayer in South Africa.

Dealing with the merits, it submitted that the product formulation allows for it to be sprayed on "Roundup-Ready" maize, soybean and Flex Cotton varieties during vegetative stage to eliminate and control weeds without affecting such crop varieties. "Roundup-Ready" crops are genetically modified crops which contain a protein enabling them to tolerate Glyphosate, the active ingredient in Roundup. This is pertinently mentioned in the commercial, which specifically states "Roundup PowerMAX is also the safe choice for use on Roundup-Ready crops", and reasonable listeners and growers would understand this message.

It also denied that the product causes cancer, adding that it has been used globally for more than 45 years to facilitate sustainable farming, and has never been recalled in any

jurisdiction (including South Africa) due to safety concerns. As in international markets, the product is heavily regulated in South Africa and is permitted for sale by the South African Department of Agriculture, Forestry and Fisheries. A copy of a certificate of registration for Roundup PowerMAX as an agricultural remedy with the Department of Agriculture, Forestry and Fisheries was submitted as proof.

The Advertiser emphasised that Glyphosate-based herbicides are not carcinogenic, have been extensively researched, and have been found to be safe when used as directed. Statements to this effect are available from the United States Environmental Protection Agency (the “EPA”) website (a copy of which was provided), and have been echoed by the Canadian Pest Management Regulatory Agency, the Australian Pesticide and Veterinary Medicines Authority, the European Food Safety Authority, the European Chemicals Agency, the German Federal Institute for Occupational Safety and Health, the New Zealand Environmental Protection Authority, and the Food Safety Commission of Japan.

The EPA has published comprehensive reports rebutting the notion that Glyphosate was carcinogenic, and confirming its safety when used as directed. Examples are available at <https://www.regulations.gov/document?D=EPA-HQ-OPP-2009-0361-0073> and at <https://www.regulations.gov/document?D=EPA-HQ-OPP-2009-0361-2344>. Similar reports have been compiled and published by, *inter alia*, the National Cancer Institute, the Leon Agricoch Consortium, and the North American Pooled Project.

The complaint appears to hinge on initial Jury findings in America, which have been appealed and will likely be overturned. Again, the Advertiser emphasised that despite these initial jury findings, the EPA has not issued an instruction to recall the product.

Given the express reference to being safe “for use on Roundup-Ready crops”, the express instruction to “Follow the instructions on the label carefully”, it cannot be argued that the commercial is misleading. In addition, given the unequivocal evidence in favour of

Roundup as a safe and non-carcinogenic product, and the fact that the product is registered and legally traded in South Africa, the complaint should be dismissed.

Application of the Code of Advertising Practice

The provisions of Clause 4.2.1 of Section II (Misleading claims) were considered in this matter.

Decision

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

The allegation before the Directorate is that the Advertiser's product is carcinogenic, and should not even be allowed to advertise, much less create an impression that it is "safe" for use.

It should be emphasised that the ARB is not mandated to determine the safety or legality of any product on the South African market. Specific regulatory authorities, which are empowered to protect South African consumers from harmful products exist for this purpose. Any concerns the Complainant has regarding the legality or safety of a product should be addressed with the appropriate regulator, in this instance, the Department of Agriculture, Forestry & Fisheries.

The Advertiser's submissions included, *inter alia*, a copy of its Certificate of Registration for Roundup PowerMAX as a herbicide with the Department of Agriculture, Forestry & Fisheries. This certificate lists the product registration number "L7769" and is only due for renewal in 2021. It specifically states that the product complies with applicable legislation. No such certificate was provided for the "Roundup Turbo" variant also referenced in the commercial. However, from the Advertiser's website at

<https://www.cropscience.bayer.co.za/Products/Herbicides/Roundup-Turbo.aspx> it appears that this product was licensed with registration number “L7166”.

It is also worth noting that the word “safe” is only used in relation to the Advertiser’s PowerMAX variant, which is said to be “the safe choice for use on Roundup-Ready crops”. As noted earlier, the certificate of registration applies specifically to this variant.

Given this, it appears that these products may be sold legally in South Africa, which means that the ARB has no reason to object to the existence of this commercial or these products. The ARB can only determine whether there is anything in this commercial that is likely to mislead consumers.

Clause 4.2.1 of Section II states, “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 Complainant referred to “big cancer cases that were brought against Monsanto overseas and the millions they had to pay out”. While no particulars were provided, the Advertiser acknowledged that initial findings were made, in terms of which it received three adverse Jury Awards. It added, however, that all these findings have been appealed, and emphasised that despite these Jury Awards, there have been no instructions from the EPA to withdraw the product from the American market. It also referred to a significant number of reports and studies which contradict any suggestion that the active ingredient, Glyphosate, was carcinogenic. An extract from an official EPA document attached to the response reads “EPA continues to find that there are no risks to public health when glyphosate is used in accordance with its current label and that glyphosate is not a carcinogen”.

The commercial pertinently advises listeners to follow the instructions on the product label carefully and clarifies that Roundup PowerMAX is “safe” to use on Roundup-Ready crops.

The Directorate is mindful of the fact that the commercial appears to be targeted at crop growers, who would presumably consider their choice of herbicides particularly carefully. The commercial also advises strict adherence to product instructions, and clarifies that the “safety” referred to applies to Roundup PowerMAX when used on Roundup-Ready (i.e. genetically modified to tolerate Glyphosate) crops.

The commercial does not suggest or advocate indiscriminate and irresponsible use. It merely informs interested crop growers that this legal product is safe for use on specific (“Roundup-Ready”) crop variants. Considering that these products appear to have been registered and approved for sale by the Department of Agriculture, Forestry & Fisheries, it would be unreasonable to prohibit the Advertiser from promoting its products.

While it is plausible that further studies might eventually reveal a carcinogenic effect (at which point the appropriate regulatory entities would presumably take action to address the issue), the submissions placed before the Directorate do not, at this stage, suggest that the carefully worded advertising is misleading.

The commercial is therefore not found to be misleading or in contravention of Clause 4.2.1 of Section II of the Code.