

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Jade Bechara
Advertiser	Nike South Africa (Pty) Ltd
Consumer/Competitor	Consumer
File References	1013 - Nike - Jade Bechara
Outcome	Dismissed
Date	6 October 2020

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Jade Bechara against a Nike South Africa website advertisement promoting children's sports bras.

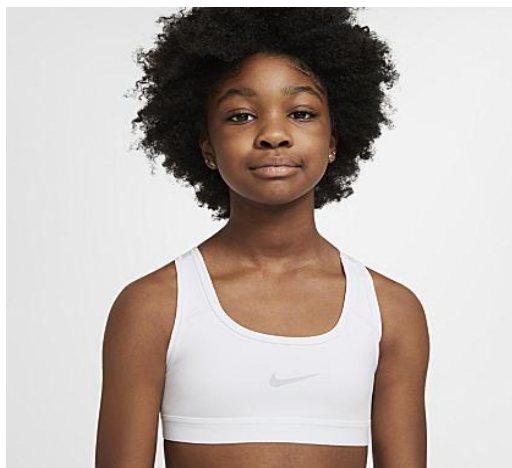
Description of the advertising

The complainant submitted the following image of the advertisement:



The Directorate was also able to source the following images at

<https://www.nike.com/za/t/seamless-sports-bra>:



Complaint

In essence, the Complainant is of the view that the advertisement is offensive as it depicts scantily clothed young girls in provocative poses.

Response

The Advertiser submitted that:

- Although it is not subject to the ARB jurisdiction and do not submit to it, it appreciates the opportunity that it has been given to see the complaint and to provide its comments to it. Its nike.com store is managed by Nike Retail B.V, a Dutch entity and the sales of products from nike.com in South Africa are fulfilled by a third party.
- The reason that the young girls are “semi clad” is because they are advertising a sports bra which is used on sporting occasions.
- There is also nothing provocative about the poses, if that is the suggestion, which is not directly alleged by the complainant. They are said to be “adult poses”, which is neither justifiable nor definable. The poses by the girls are assertive, as young sports girls would be. It would take a prurient mind to suggest that the poses are provocative. There is certainly nothing offensive about the pictures, which are an attractive way of advertising an attractive product. The pictures show nothing more than would be seen at any young persons’ sporting event. There is nothing sexual about the pictures at all.

Application of the Code of Advertising Practice

The following clauses were considered in this matter:

- Offensive advertising - Clause 1 of Section II
- Children - Clause 14 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 has stated that it does not fall under the jurisdiction of the ARB but has co-operated fully in supplying a response.

For the purpose of clarity, the Directorate notes that Clause 3.3 of 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 its members.

The ARB will 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

Clause 14 of Section II states that:

“Children should not be portrayed as sexually appealing, provocative or in any manner which involves any form of sexual innuendo.”

The essence of the complaint is that the Complainant finds the advertising offensive because it depicts scantily clothed young girls in provocative poses. The question is

therefore whether the depicted children's mode of dress and their poses are unacceptable and offensive as raised in the complaint.

The Directorate understands the Complainant's concerns regarding improper depiction of children, particularly during these times when the spotlight falls heavily on human trafficking, especially affecting women and children. It is therefore important that young girls are not portrayed in any manner that sexualises them.

The Directorate notes that the picture submitted by the Complainant, when compared to the other pictures on the website, causes a small discomfort. Whereas the other pictures show the girls in more innocent postures, the particular picture highlighted by the Complainant has something slightly more adult about it – the thrust of the girl's hip and the direct, serious expression on her face are slightly more adult, and stand out against the more playful tone of the other photographs. However, the Directorate is not convinced that this discomfort translates into a breach of Clause 14, in that there is nothing that a reasonable person should consider "sexually appealing, provocative or . . . involves any form of sexual innuendo" in terms of the Code.

In this regard, the Directorate also considered that the product in question is sports bras, which are normally used during sporting events and are an acceptable mode of dress for such occasions. This is not the equivalent of showing young girls in their underwear.

Given the above, the Directorate is of the opinion that the advertisement is not in contravention of Clause 14 of Section II of the Code, and is not offensive in terms of Clause 1 of Section II.

The Directorate does, however, call on the Advertiser to be mindful and vigilant of the very fine line at play in advertising of this nature.