Decision of the ADVERTISING REGULATORY BOARD

Complainant	Colgate-Palmolive Company and Colgate-Palmolive (Pty) Ltd
Advertiser	Bliss Brands (Pty) Ltd
Consumer/Competitor	Competitor - Breach
File reference	MAQ Soft - Sta-Soft
Outcome	Dismissed
Date	19 November 2020

The Directorate of the Advertising Regulatory Board has been called upon to consider a breach complaint lodged by Colgate-Palmolive Company and Colgate-Palmolive (Pty) Ltd ("Colgate") against print advertising by Bliss Brands (Pty) Ltd.

On 30 August 2019, the Directorate ruled that the respondent's packaging was in breach of Clause 9 of Section II of the Code of Advertising Practice. The advertiser was ordered to withdraw its advertising, in accordance with the provisions of Clause 14 and 15.3 of the Procedural Guide.

Description of the advertising

The advertising that was found to be in breach of Clause 9 of Section II in the Directorate ruling of 30 August 2019 appears below and contained the word SOFT.

This will be referred to as the offending advertising.

Complaint

Kisch IP submitted a breach complaint on behalf of Colgate, alleging that the advertiser is in breach of the Directorate ruling dated 30 August 2019. A fairly lengthy series of events ensued, including a suspension ruling, an AAC ruling and an FAC ruling. None of this is immediately relevant to the current breach complaint.

In essence, Colgate submits that the offending advertising should have been withdrawn by 23 November 2019, and in the case of the 500ml MAQ Soft fabric conditioner refill packs, no later than 21 February 2020. In the case of newspapers and magazines, the offending advertising should have been withdrawn immediately, or within a period of approximately two weeks.

The Complainant submits that the Advertiser is still clearly promoting the offending advertising. Although the Advertiser's website at www.blissbrands.com/laundry-care/ appears to reflect updated advertising, the Complainant refers to a number of broadsheets evidencing that the Advertiser continues to promote the offending advertising.

The Complainant alleges that the Advertiser remains in breach because of the existence of these broadsheets, and calls for both an immediate withdrawal of the offending advertising, as well as the imposition of sanctions, as they consider this to be a flagrant and blatant disregard of the Directorate decision. The Complainant also requests a costs order.

Response

Eversheds Sutherland responded on behalf of the Advertiser, outright denying that it is in breach of the Directorate ruling.

The Advertiser advises that it has no available stock of the offending product packaging, and advertising unavailable stock would be detrimental to its own interests.

As far as the broadsheets are concerned, the Advertiser makes the following relevant points:

1. The Advertiser is unsure of the source of the broadsheets;
2. Broadsheets are verified by wholesalers, and not brand owners;
3. The Advertiser advised SILO, a digital FMCG image repository platform that many major retailers use, as long ago as March 2020, of its new packaging.
4. Although the Advertiser itself has no stock of its old packaging, some of the retailers might still have such stock and will only update broadsheets when new stock is put on shelf.
5. Brand owners have no way of forcing these retailers and wholesalers to use current product packaging.
6. The Complainant is aware of this this industry practice. Examples were given where some of the Complainant's own outdated images were used.

The Advertiser referred the Directorate to correspondence showing that it had advised several retailers of its new packaging and all the remaining retailers draw their images from SILO.

In short, the Advertiser submits that it is not in breach of the ruling as it did not itself disseminate any offending advertising. It should therefore not be held in breach, nor should it be asked to pay for the costs of this breach complaint.

Application of the Code of Advertising Practice

The following clause was considered in this matter:

- Enforcement of rulings – Clause 15 of the Procedural Guide;
- Sanctions – Clause 14 of the Procedural Guide.

Decision

The Directorate considered all of the evidence before it and is satisfied that the Advertiser did not breach the Directorate ruling of 30 August 2019.

The Directorate visited the website at www.blissbrands.com/laundry-care/ and is satisfied that the Advertiser has made all of the required changes to its packaging and advertising.

The Directorate furthermore accepts the Advertiser's explanation regarding broadsheets and finds that the Advertiser has discharged its onus in terms of updating the offending packaging to the new and acceptable advertising. The correspondence provided by the Advertiser demonstrates that the Advertiser acted in good faith, in compliance with the previous Directorate ruling, and has not disregarded the Directorate's ruling, as is alleged by the Complainant.

The Advertiser is therefore not in breach of the Directorate ruling of 30 August 2019.