Decision of the ADVERTISING REGULATORY BOARD

Advertiser	The South African Breweries (Pty) Ltd
Consumer/Competitor	Consumer
File reference	3702-Brutal Fruit
Outcome	Upheld
Date	30 January 2025

The Directorate of the Advertising Regulatory Board has been called upon to consider a consumer complaint against advertising for Brutal Fruit, which is an alcoholic beverage.

Description of the advertising

The television commercial appeared on DSTV channel 121. The commercial depicts, *inter alia*, a shot or frame of a glass bottle of Brutal Fruit displayed on a colourful beach towel. The rest of the commercial contains a series of scenes and settings in which a group of friends are enjoying Brutal Fruit.

Complaint

The Complainant submitted that drinking alcohol on the beach is against the law and mentioned that drunk people often drown on South African breaches, which the advertising should not encourage. The Complainant also mentioned that glass bottles are broken on South African beaches, and that children could cut their feet on the broken glass. In summary, the Complainant submits that it is not necessary to drink alcohol in order to enjoy South African beaches.

Directors: GD Schimmel (CEO) K Denalane (Chair)
A Allison C Borain S Fakir A Gcoyi G Leck N Motsoeneng M Neethling C Khanyile A Pimentel

Response

The Advertiser responded by stating that it is aware of the regulations surrounding consumption of alcohol in public spaces and respects these regulations. The Advertiser notes that the bottle which is depicted on the beach is closed and was only displayed with the intention of showcasing the brand, and at no point did any of the people in the commercial consume the product on the beach.

Regarding drowning risks, the Advertiser mentioned its internal communications code which aims to promote responsible drinking. As far as the glass bottle is concerned, the Advertiser mentioned that it continues to encourage responsible disposal of bottles with appropriate guidance labelling to this effect appearing on its packaging.

Lastly, the Advertiser states that it respects that people enjoy beach outings in different ways, and states that the campaign's core message is about celebrating moments responsibly and in a manner that aligns with the consumer's personal choice, reiterating that it is dedicated to championing responsible consumption and ensuring that all its commercial communications maintain this standard.

Application of the Code of Advertising Practice

The following clause of the Code of Advertising Practice (the "Code") was considered in this matter:

- Clause 3.3 of Section II: Unacceptable advertising – Legality.

Decision

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

The Directorate starts by mentioning that the Complainant raises that because the bottle in the commercial is glass, this can lead to broken glass on beaches, which is of course dangerous. While the Directorate understands the complainant's fear that people could

get hurt by broken glass, there is nothing in the commercial suggests that there is broken glass, or that there is a likelihood that someone is going to break the glass bottle and cause someone to get hurt. This aspect of the complaint will therefore not be considered further.

However, the remainder of the complaint, which is that the commercial depicts and condones the drinking of alcohol on the beach, which is illegal, will be considered.

It appears to be common cause that it is illegal to drink on beaches, or in public spaces, in South Africa. There is provincial legislation as well as municipal bylaws in place in this regard.

During a one-minute commercial, the beach scene is the first 5-6 seconds, and the commercial cuts back to the beach again at about the 19 second mark, for another 2 seconds and again at 36 seconds for a final 3 second period. It is also true that the characters, when filmed during the beach scenes, are not depicted drinking, and the bottle of Brutal Fruit remains closed. However, the commercial flits speedily from one scene to the next, with many other scenes depicting the characters drinking and clinking glasses.

The Advertiser's argument that the bottle is closed, and alcohol is not being consumed in the beach scenes is therefore a little disingenuous. A hypothetical reasonable consumer watching the commercial as a whole and not pausing scene by scene as the Directorate did above, will view the commercial in its entirety, depicting friends enjoying Brutal Fruit together in various settings, and will not isolate the beach scenes, will not analyse each frame and conclude that alcohol is not consumed on the beach. The overall takeaway of the commercial, by the hypothetical reasonable person, is that the Brutal Fruit alcoholic drink is consumed by friends in a variety of settings, and because the commercial includes scenes on the beach, the inference can be drawn that it will also be consumed on the beach. It is a bit of a stretch for the Advertiser to assert that because the bottles are closed it is used to highlight the brand and does not encourage drinking on a beach.

Clause 3.3 of Section II states that advertisements must not contain anything which might lead or lend support to criminal or illegal activities, nor should they appear to condone such activities.

There is no doubt in the minds of the Directorate that watched as a whole, the commercial condones and in fact encourages bringing alcohol to the beach and consuming it on the beach. This is illegal.

Accordingly, the Directorate finds that the advertising contravenes Clause 3.3 of Section II of the Code.

Sanction

The Advertiser is instructed to withdraw or amend the advertising in its current format wherever it appears.