

BEFORE THE FINAL APPEAL COMMITTEE OF THE ADVERTISING REGULATORY
BOARD

In the matter between:

Pioneer Food Groceries (Pty) Limited

Applicant

and

Consumer

Respondent

Matter No: 3753

DECISION

1. This is an appeal by Pioneer Food Groceries (Pty) Limited (appellant) against a Decision of the Advertising Appeals Committee (AAC) of the Advertising Regulatory Board (ARB) in a complaint which was brought by Mr Mpe (the consumer/respondent). The consumer had partial success before the ARB's Directorate but the bulk of the complaint was dismissed. The consumer also had partial success before the AAC in that part of his complaint was upheld, the rest dismissed. The appellant then noted an appeal against the consumer's complaint that was upheld; it is that complaint that is the subject of this appeal.
2. The AAC correctly said that the complaint before the Directorate related to three distinct issues:

"2.1 First, that the claims '100% fruit juice' and 'Nothing But Fruit' were

misleading because they created the expectation that the beverage contained only fruit juice, without any additives or modifications ('the misleading issue').

2.2 Second, the veracity of the claim that fruits were only sourced from local farms was disputed ('the truthfulness issue').

2.3 Third, that the Advertisement was in contravention of sections 19 and 41 of the Consumer Protection Act ('CPA') ... which prohibit false and misleading advertising ('the CPA issue')."

3. In its Ruling, the AAC held that the advertisement "*Nothing But Fruit*" was misleading. The appeal before us is therefore restricted to this point; as a result, we need not deal with the other issues which were in any case resolved, one way or another.

4. The essence of the complaint in question was that the advertisement that the product was "*Nothing But Fruit*" was inaccurate and thus in breach of clause 1.1 of the Advertising Code, and also misleading in breach of clause 1.2; the reason being that contrary to the word "Nothing", the fruit contained certain additives over and above the juice of the fruit itself. It is common cause that there are indeed some additives to the fruit juice. The additives are said to be necessary to ensure a long shelf life of the juice. The appellant admits that there are limited additives "*of no more than 0.5 percent volume – contained in the products. These are citric acid, Vitamin C and flavours comprising a miniscule 0.5% of the product. ... The additives (citric acid and ascorbic acid) are all naturally found in fruit. The*

flavours are cloned as natural flavours and are made from fruit". It is noteworthy that they are not from the fruit but from "*fruit*". In his oral submissions Mr de Beer, for the appellant, said that these additives were laboratory manufactured. The matter was therefore, correctly, decided by the AAC on the basis that there were indeed some additives comprising 0.5% of the product in the container. This is the basis on which we should also decide the matter. It was the consumer's argument that the claim "Nothing But Fruit" was not only misleading but also psychologically manipulative; where additional ingredients are added, he argued, the advertiser should be more transparent in disclosing this, something which, in his view, the advertiser has failed to do in the disputed advertisement. The complaint is therefore a straightforward one. The only point to be considered by the AAC was whether "*Nothing But Fruit*" was misleading.

5. One argument advanced by the appellant was that because it had under a different regime been allowed to use the terms such as "100% fruit juice" and "100% fruit juice blend" in the description of the product, the addition of the above additives does not detract from the fact that the products in question are "*100% fruit juice*" or "*100% fruit juice blends*" as the use of these phrases is anchored to the quality of a produced juice being single-strength at 100%. While the AAC had no problems with the claims "*100% fruit juice*" or "*100% fruit juice blends*", it rejected the conflation of these two claims with the claim "*Nothing But Fruit*". Mr de Beer submitted that the AAC erred in distinguishing between the two; in effect, he argued that because appellant had been allowed the claim "*100% fruit juice*" or "*100% fruit juice blend*", the appellant must therefore be allowed to use the advertisement "*Nothing But Fruit*". The argument is misconceived and was correctly rejected by the AAC. This is simply because the advertisement "Nothing

But Fruit” overlooks the fact that there are also additives (to ensure a long shelf life). It is the truth the appellant does not and cannot dispute. This is the simple point made by the consumer: be transparent and reflect that. The fact that the additives are minuscule does not detract from the fact that they are there. In fact, on the outside, the container lists these additives. It is a disclosure the appellant is compelled to make – no matter how minuscule those additives may be! We therefore agree with the AAC that the advert “*Nothing But Fruit*” is inaccurate. The degree of the inaccuracy does not matter, otherwise one would end up with the problem as to what degree of inaccuracy is or is not permissible.

6. The appellant also raised the argument that an average consumer would know that for a long shelf life, the product would have to have some additives. This is too high a bar for an average consumer; it assumes too much technical knowledge on the part of such a consumer.
7. The AAC said that the Code required that claims made in advertisements must be adequately substantiated and that they were not likely to mislead a consumer. As far as the claim “*100% fruit juice*” and “*100% fruit blend*” were concerned, the AAC was satisfied that the appellant had adequately substantiated its use of the terms in the advertisements and that the terms could not be said to be misleading. However, regarding the use of the trademark “*Nothing But Fruit*TM”, it had a different view; it found the claim misleading.
8. The appellant also argued that because it had registered “*Nothing But Fruit*TM” as a trademark, prohibiting it would deprive the appellant of its constitutional right to use its trademark. This argument was swiftly disposed of and Mr de Beer could not press it further. It was pointed out to him that there was no such thing as a

constitutional right to mislead consumers: once we find the advertisement misleading, we would declare it so; it would be up to the appellant how to reframe its trademark.

9. We do not intend to deal with every point canvassed by the AAC. In his written submissions before us, Mr de Beer argued that the AAC did not fully explain why it came to the conclusion that “*Nothing But Fruit™*” was misleading. We do not agree. We take the liberty of restating the AAC’s reasoning to which, apart from what we have already said, we need not add anything further. After endorsing the use of “*100% fruit juice*” and “*100% fruit juice blend*”, the AAC reasoned as follows:

“18.2 However, when it comes to the Advertiser’s use of its trademark, “Nothing But Fruit™”, this requires closer scrutiny. The Advertiser was correct to abandon its hyperbole contention on appeal. That said, we are equally unpersuaded by the Advertiser’s suggestion that the term is meant to denote that no other form of produce, such as vegetables, are used as an additive. In our view, a reasonable consumer would not see “Nothing But Fruit™” and likely conclude that no vegetables have been added to a fruit juice. ‘Nothing’ means exactly that – the absence of anything else.

18.3 The Directorate found that the context of the ‘Nothing But Fruit™’ claim obviates the misleading nature of it, but we do not agree. The Advertisement states that: ‘We were also the first brand to make 100% fruit juice – bringing Nothing But Fruit™ to the homes of millions of South Africans’. For the reasons already provided above, there is no issue with the first leg of the claim, but the second leg, viewed in

full and proper context, indicates that the fruit juice contains nothing except fruit. But we know that it does at least one thing – certain permitted additives. While the regulated use of those additives may entitle the Advertiser to make claims such as ‘100% fruit juice’ or ‘100% fruit juice blend’, they do not permit the Advertiser to state that nothing but fruit has been added to the juice. It matters not that the claim comes in the form of a trademark. It has been used in a manner which we find is likely to mislead a reasonable consumer”.

What we have quoted above shows that it is not correct to say the AAC did not fully explain why it came to the conclusion that “*Nothing But Fruit™*” was misleading.

10. For the reasons given above, we agree with the Ruling of the AAC. The Following Order is therefore made:

10.1 The appeal is dismissed.

10.2 The Ruling of the Advertising Appeals Committee dated 29 August 2025 is hereby confirmed.

Dated this 26th day of March 2026.

Judge B M Ngoepe, Retired Judge President, Chair of the Final Appeal Committee

Ms S Ngoma, Member, DFSA Representative

Mr C Borain, Member, IAB Representative

Mr G Leck, Member, ACA Representative

For the appellant: Mr de Beer, Instructed by Werksmans

For the Consumer: In person