

# Family business takes on Woolworths over alleged imitation products

Frankie's Olde Soft Drink Company has complained to the ASA over what it claims are Woolworths products that closely resemble some of its own. According to Mike Schmidt, Frankie's owner, "These products threaten to tarnish the very foundations on which the Frankie's brand is built." Woolworths' Zyda Rylands, MD of Food, has responded to the claim.

Frankie's Olde Soft Drink Company - established in 2006 on a small farm in the Midlands of KwaZulu-Natal - claims to be a unique brand that has been inspired and built around the nostalgic tastes of yesteryear. The company, according to a release issued on its behalf, believes it is widely acknowledged for its creative products and retro packaging.



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However, this small family-run business "is currently struggling to keep its original vintage concept intact" following the release of products by Woolworths Limited bearing, what the release issued on Frankie's behalf claims to be, "design elements of such close resemblance that even regular Frankie's consumers could not be criticised for their confusion between the beverages".

According to the Frankie's press release, the products in question were first brought to the attention of Mike Schmidt, owner of Frankie's, in December 2010. At this time he was made aware that incorporated within the repackaging of Woolworth's ginger beer was the image of a "1950's blonde Lady." The press release reads: "It was noted that this device was remarkably similar to that of the Frankie's vintage-inspired woman that has appeared, since inception, on every bottle in different outfits and poses. It is an element that, as a result, has become synonymous with the Frankie's brand". Feeling that their brand identity was in jeopardy, Frankie's sent a letter to Woolworths drawing attention to what the press release describes as "this blatant similarity".

Woolworths response was that there was no foundation on which to base a copyright infringement claim.

## 'Upsetting'

According to Schmidt, "The creative concept and visually distinctive design of all Frankie's products have had as large a part to play in the success of the brand as the unique and original flavours offered. After working so hard to create a brand identity that clearly differentiates Frankie's from other soft drinks, it is now upsetting that many of these key aspects that significantly contribute to its personality have been imitated and which, as a result, may negatively impact this relatively new and fast developing brand."

Following the initial exchange, another complaint was issued in April 2011 after it was brought to Schmidt's attention that a presentation between Woolworths and Chill Beverages (the manufacturer that sells products in the Woolworths packaging) had transpired in which Chill Beverages had allegedly clearly projected their intention to base the Woolworths range on Frankie's distinct branding and style. The presentation is alleged to have illustrated the desire to make use of identical bottles, '50s-inspired candy-stripped graphics and the strapline "Old Fashioned Soft Drink" - the slogan used in Frankie's advertising material and which it believes is indicative of the brand.

Flavours allegedly discussed also mimicked those of the Frankie's brand, with Clear Cream Soda, Cloudy Lemonade, Cinnamon Cola and Root Beer, all representing flavours introduced to South Africa via Frankie's. A letter from Frankie's was sent to Chill Beverages, which, according to the press release issued on Frankie's behalf, denied the proposed plan.

## Not opposed to competing products, but...

However, November 2011 saw Woolworths introduce what the Frankie's press release terms their "new" range to stores around the country. According to Frankie's, the bottles used are "near identically shaped bottles with candy-striped labels and bearing the previously proposed strap line, the products could - and have been - mistaken for Frankie's products".

"These products threaten to tarnish the very foundations on which the Frankie's brand is built, and could result in substantial damage to the reputation and income of the company," says Schmidt.

The range includes the products "Fiery Ginger Beer" and "Cinnamon Cola" which, Frankie's believes, are flavours that are a direct and blatant copy of the Frankie's product already on the market.

According to Frankie's, it is "however, primarily due to Woolworths' new range including the phrase "Good Old Fashioned" - a phrase that is not merely a descriptive term but one that has become firmly associated with Frankie's, representing a theme that is central to the brand and its core advertising concept - that Frankie's has proceeded with a complaint to the Advertising Standard Authority and awaits further instruction.

Schmidt concludes: "I am not opposed to competitive products that are on the market, however, any products that reflect intentional and conscious copying in an attempt to profit off the success of the Frankie's brand are not acceptable and need to be brought to the attention of the necessary authorities."

## Woolworths responds:



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Responding to the allegations, Zyda Rylands, Woolworths MD of Food, has issued the following statement:

"We believe that the allegations made against Woolworths are unfounded. We have not infringed any copyright, intellectual property nor registered trade mark. We have also not been contacted by the ASA or any other appropriate authority about these allegations.

## Flavour

"Old fashioned drinks are not a new concept. Flavours such as cream soda, ginger beer and cola are used by a number of soft drink manufacturers and no one company owns the rights to these flavours, and therefore the use of these names. The names of these flavours have also been used widely for decades.

## Design concept

"We have used the nostalgic or vintage design concept for many years in a range of products including our confectionary products like fudge. Our designs were inspired by a retro feel which is a growing trend internationally in retail. We were also inspired by Woolworths products from the mid-20th century.

## Differentiation

"As with all Woolworths products, our labels and typography is consistent with Woolworths brand identity. Further, the shape of our bottle is different. We do not believe that Woolworths range resembles Frankie's soft drinks.

## Local supply

"Woolworths vintage range of soft drinks are produced with local entrepreneurs. We respect the rights of any business, including small business."

Zyda Rylands, Woolworths MD of Food

Woolworths subsequently added:

### **Clarification:**

To clarify the meeting concerns raised by some:

Woolworths meets with local and international suppliers on an ongoing basis. Frankie's did request an introductory meeting with Woolworths to present their products for listing with Woolworths. One of Woolworths buyers met Frankie's. However as is typical with introductory pitches, it was a very high level meeting and no intellectual property was discussed.

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