

Decision of the ADVERTISING REGULATORY BOARD

First Complainant	Dr. Pikkie Kok
Second Complainant	Mr. Christo Roodt
Advertiser	Absa Bank Limited
Consumer/Competitor	Consumer
File reference	Absa - Dr Pikkie Kok & Another
Outcome	Dismissed
Date	30 August 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider complaints lodged against an ABSA television commercial that appeared on DSTV, SABC and ETV during the period of 10 June to 5 August 2019.

Description of the advertising

The commercial shows a young boy's daily struggle to catch his school bus in the morning. He is shown trying to wake up early in the morning and run towards the bus stop, but no matter how hard he runs he never reaches the school bus on time. A shopkeeper who works near the bus stop notices this boy's struggle and decides to move the bus sign post and erect it at a place where the boy can easily catch the school bus. The following morning the boy wakes up earlier than usual at 5.50, and rushes to the bus stop, where he sees a new bus stop sign and the school bus waiting for him. The voice over then states: "We find a way to get things done. That's Africanacity. That's ABSA."

Complaint

The First Complainant argued that the commercial shows a member of the public committing an unlawful act of removing a road traffic sign and replanting it in another place to help a school boy catch his bus in time before it departs. The First Complainant submitted that the conduct of the shopkeeper is unacceptable and will encourage unlawful behaviour. It was further argued that the Respondent's advertisement communicates that lawlessness is good and that children may participate and also benefit from its advantages and proceeds, thus cultivating an unlawful youth that will have no respect for the law and who will not be able to distinguish between right and wrong.

The Second Complainant argued that the commercial is illegal as it suggests that it is allowed and legal to move a traffic sign to suit one's own interests. The Second Complainant also referred to sections 57(4), (10) & (12) of the National Road Traffic Act 93 of 1996.

Response

The Respondent submitted that the advertisement in question is "positioned clearly, as the settings invented, the characters are universal and the story is a metaphor of how the Respondent seeks to help people realise their possibilities". It was further explained that the Respondent purposefully removed all identifiable elements within the setting and characters, to ensure that it has no geographical references nor any reference to real people, real shops, and real schools. It argued that in no way does the Respondent encourage nor endorse any form of criminality.

The Respondent conducted a market research to pre-test its major campaign and bus commercial before launch. The market research was conducted in November 2018 by a research agency which is SAMRA accredited and also a member of ESOMER. The findings of the research indicate that when consumers saw the commercial it inspired positive emotions due to the simple storyline and relatable characters. In addition to this, consumers had a positive reaction to the shopkeeper's action in moving the bus stop. In conclusion, the findings of the market research showed no gross negatives, no mention of any concern regarding the moving of the sign post. The Respondent submitted that

the research gave it confidence that there were no problems with the television commercial and it could proceed to air it.

The shopkeeper's act of understanding the boy's struggles and seeking a way to help him as depicted in the commercial, is reflective of the brand's positioning "Africanacity": which is an invented word which means tenacity, creativity, ingenuity of the people of the Continent, who on a daily basis find ways of overcoming challenges and get things done. The Respondent then argued that the hypothetical reasonable person viewing the advertisement would understand that the commercial uses a metaphor as a creative device for the Respondent's "Africanacity" brand positioning and an analogy of how it seeks to get things done. It was further argued that there is nothing to show that a hypothetical reasonable person would infer real-life actions for the advertisement. The Respondent therefore requested that the complaints be dismissed based on the above-mentioned submissions.

Application of the Code of Advertising Practice

In light of the complaints, Clause 3.3 of Section II (Legality) was considered relevant.

Decision

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

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

The complaints stem from the opinion that it is illegal in South Africa for members of the public to remove road signs.

The Second Complainant submitted that the removal of road signs is an illegal act in terms of Section 57 sub-sections (4), (10) & (12) of the National Road Traffic Act 93 of 199, which states the following:

- **S57(4)** Notwithstanding the provisions of subsections (2) and (3), the MEC concerned, or any person authorised thereto by him or her either generally or specifically, may in respect of any public road referred to in subsection (3) and which is a road constructed or maintained by the Administration of the province

concerned, in addition to the road traffic signs referred to in subsection (3), cause or permit to be displayed in the prescribed manner such road traffic signs as he or she may deem expedient, and no local authority may without the consent of that MEC remove or permit to be removed any such road traffic sign.

- S57(10) No person shall display any road traffic sign on a public road unless having been authorised thereto by or under this Chapter.
- S57(12) No person shall wilfully or negligently damage any road traffic sign, or any other sign, signal, marking or other device, displayed in terms of this Chapter, or without proper authority remove it or alter the position thereof or the inscription, lettering, colour or marking thereof or thereon.

The Advertiser does not dispute that this is the law with regard to road signs, and that the depicted action is therefore unlawful. The question that remains before the Directorate is therefore whether the depicted action would lead or lend support, or condone, similar actions.

To answer this question, the Directorate needs to determine the probable impact of the commercial on the hypothetical reasonable person. This fictional, reasonable person is the normal, balanced, right-thinking person who is neither hypercritical nor over sensitive.

The Directorate notes that the Respondent had conducted market research prior to airing the commercial. The research was conducted by a SAMRA accredited agency that is also a member of ESOMER. The Directorate struggled with how to apply the research. On the one hand, it shows a high positive reaction to the actions of the bus keeper. The fact that no-one interpreted his activities as illegal could be understood as support for the argument that the commercial condones his actions.

On the other hand, the respondents to the survey made connotations of people helping other people, and people having innovative answers to obstacles. There was a high understanding of the message and metaphor of the commercial.

The reality is that no reasonable consumer would watch the commercial and then try to emulate the activity. This is for a number of reasons: it is in fact physically very challenging, and in most cases impossible, to move a bus stop; reasonable viewers understand that moving a bus stop is illegal; and it would seldom actually be the best and most practical answer to a problem. The viewer would understand that the story in

the commercial is meant as a fictional metaphor around the African trait of helping people in innovative ways.

The Directorate understands the Complainants' discomfort with the fact that an illegal activity is displayed in a positive light, especially in a country where petty lawlessness is an issue. However, the Code requires that the depicted illegal activity "lends support to" or "leads to" or "condones" that activity. The Directorate does not believe that that is the case in this commercial.

The commercial is therefore not in contravention of Clause 3.3 of Section II of the Code.