

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Ms. Katharine Rangayah
Advertiser	The Car Trader (Pty) Ltd
Consumer/Competitor	Consumer Complaint
File reference	389 - Auto Trader - Rangayah
Outcome	Uphold
Date	9 October 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged against Auto Traders online advertisement that appeared on www.autotrader.co.za/car-for-sale/bmw/5-series/520d/25110480.

Description of the advertising

The advertising in question features an image of a black BMW 5 series which is described as follows:

- Used car
- 2011 model
- 170 000 km on speedometer
- Automatic gearbox
- Diesel engine

The car has the following general specifications :

- Fuel range average - (1429 km)
- CO2 emissions (average) - 123g/km
- Service interval indicator - service interval indicator km
- Warranty time (years) - 2 years

Complaint

The Complainant submitted that the dealership (EBK Auto dealer) advised her that it does not provide the warranty advertised on the Auto Trader website. The Complainant, in essence, argued that the advertisement is misleading to consumers, as it falsely communicates that the car has a 2 years warranty.

Response

The Respondent denied all allegations and argued that the advertisement is not misleading. It pointed out that the complainant failed to read the entire advertisement, and specifically the clarification disclaimer which appears at the bottom of the claims in question. The disclaimer states, *inter alia*, “Please note: the data displayed above details the usual specification of the most recent model of this vehicle. It is not the exact data for the actual vehicle being offered for sale and data for older models may vary slightly. We recommend that you always check the details with the seller prior to purchase.” This means that the two year warranty refers to the two year manufacturer’s warranty which comes with the vehicle when it is initially registered. The Respondent submitted that the vehicle advertised is a 2011 model, thus a used vehicle and the two year warranty has expired.

The Respondent explained that its business consists of publishing advertisements for motor dealers, and it is not seller or dealer. It relies on information and data from the actual dealers or sellers of the vehicles in question. It submitted that, with regards to the advertisement in question, it published data for the vehicle in good faith after receipt of same from the dealer and its third party data supplier. The Respondent argued that the advertisement does not specify that a two year warranty will apply to this particular

vehicle, and no time for the commencement of any purported warranty is given. It was furthermore explained that the information regarding the two year warranty is merely part of the vehicle specifications as stated in the disclaimer.

The Respondent pointed out that the disclaimer encourages potential buyers to contact the seller or the dealership before finalizing the purchase agreement, in order to check the details of the car. In this case, the complainant states that the dealership advised her they do not provide the warranty despite what the online advertisement states.

Application of the Code of Advertising Practice

In light of the complaint the following clause was considered:

Misleading claims - Clause 4.2.1 of Section II

Decision

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

The Complainant submitted that the advertisement is misleading as it creates an impression that the car on sale has a 2 years warranty applicable, when it actually does not.

The Respondent denied all allegations, arguing that the disclaimer provides that the details provided apply to a standard model new vehicle. In this case, the warranty does not apply.

Clause 4.2.1 of Section II of the Code states, *inter alia*, that advertisements should not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggeration claim or otherwise, is likely to mislead the consumer.

The question before the Directorate is whether or not the disclaimer informing the consumers about the vehicle specifications clarifies that the two year warranty does not necessarily apply.

The Directorate needs to determine the probable impact of the advertisement on the hypothetical reasonable person. This fictional, reasonable person is the normal balanced right thinking person who is neither hypercritical nor over sensitive.

The advertisement features an image of the car on sale, together with a series of information about the car. The claim in question appears under the heading "BMW 5 Series 520d Specifications", and it states, "warranty time (years) - 2 years".

The disclaimer refers to "*the usual specification of the most recent model of this vehicle*". The Directorate is of the opinion that the hypothetical reasonable person would understand this to refer to the vehicle's specifications – things like fuel range and CO2 emissions. It is highly unlikely that the consumer would consider a warranty as part of the vehicle specifications. A warranty is something that is offered by a specific seller; not something that is inherently attached to the car. The fact that a warranty is referred to at all is not something that HAS to be there, and the consumer would therefore presume that it is advertised because it is offered. There really is no other reasonable conclusion. In addition, the warranty is referred to unconditionally – there is no wording indicating a limitation such as "subject to availability".

Therefore, the hypothetical reasonable person reading the claim in question together with the disclaimer would understand that car specifications might be slightly different, but not that the 2 years warranty does not apply.

Based on the above, the advertisement is in contravention of Clause 4.2.1 of Section II of the Code.

Sanction

Given the finding above, the Advertiser must withdraw the claim within the deadlines of Clause 15. 3 of the Procedural Guide.

The Directorate recognises that this particular offer has most likely run its course, and instructs the Advertiser to assess and amend its future advertising and standard templates in line with this decision.