

## Decision of the ADVERTISING REGULATORY BOARD

Complainant	Richard O'Reilly
Advertiser	Massmart Holdings t/a Game Stores
Consumer/Competitor	Consumer
File reference	Game Liquor / Richard O'Reilly
Outcome	Dismissed
Date	24 May 2018

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged against shelf advertising at Game Liquor Store in Lephalale.

### Description of the advertising

The shelf price in question was placed on top of the shelves, and promoted a range of whiskeys, which were priced "from R179".

### Complaint

The Complainant submitted that he saw the price "R179" in large letters on top of the shelves, but upon entering the store and looking closer at the sign, there was a very small "From" next to the price, which was not discernible from the doorway. The Johnny Walker

Red Label whisky below the sign was priced at R223,99, and only the bottom row of the shelf had liquor priced at R179,00. The Complainant argued that the size of the word "From" should have been more prominent so as not to mislead the customer.

## Response

The Respondent pointed out that it is not a member of the ARB and does not submit to its jurisdiction.

The Respondent respectfully, disagrees with the basis complaint, in particular that the use or size of the font of "from" constitutes a misleading claim. The Respondent submitted that the products on promotion do fall within that price range that is advertised and the products within the price range were displayed on that very same shelf.

Therefore, it argued that the advertisement meets the requirements of Section 4.5.1.1. of Section II of the ARB Code, in that there is no likelihood of the consumer being misled as to the availability of the benefits offered (in this case products offered at a price of R179, which the consumer, himself, concedes was available on the same shelf).

Furthermore, it submitted that the use of "from" in a price advertisement perspective is a common advertising method, which consumers should not be surprised by. Even if one is unable to see the word "from" from a far distance, one is able to see that there is something featured under the price which requires a closer view.

## Application of the Code of Advertising Practice

The following clause was considered in this matter

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.

## **Jurisdiction**

The Advertiser submitted that it is not a member of the ARB.

Clause 3.3 of the Memorandum of Incorporation of the ARB provides that “The Company has no jurisdiction over any person or entity who is not a member and may not, in the absence of a submission to its jurisdiction, require non-members to participate in its processes, issue any instruction, order or ruling against the non-member or sanction it. However, the Company may consider and issue a ruling to its members (which is not binding on non-members) regarding any advertisement regardless of by whom it is published to determine, on behalf of its members, whether its members should accept any advertisement before it is published or should withdraw any advertisement if it has been published”

The Directorate will therefore proceed to consider this matter for the benefit of its members.

## **Merits**

Clause 4.2.1 of Section II of the Code deals states, inter alia, “Advertisements should not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer.”

In determining whether the advertisement is likely to mislead consumers, it must be considered as a whole and not based on selective parts thereof.

The shelf advertisement was placed on top of shelves displaying Johnny Walker and other whiskys, and states “R179” in big letters and the word “from” in a significantly smaller font size.

The complainant argued that the advertisement was misleading as the word “from” was not discernible from the doorway. Upon closer inspection he found that the Johnny Walker Red Label whisky was priced at R223,99, and only the last (bottom) row of the shelf had liquor priced at R179,00.

While it may have been disappointing for the complainant to discover that the product he was interested in was not offered at R179,00, that does not make the advertisement misleading.

While the Directorate agrees that the word “from” could have been bigger, it is nonetheless clearly legible. The word “from”, although smaller in size, is highlighted in yellow against a pink background, which makes it visible and legible to consumers. Therefore, the fact that the word “from” is smaller than the price, or the fact that the Complainant had move closer to the shelf to read what was written, does not make the advertisement misleading.

In addition, the prices of the respective bottle of whiskys is indicated on the shelf where the product is placed, thus clearing any potential miscommunication. It is also relevant that the pricing did not make specific reference to any particular product.

The hypothetical reasonable person viewing the advertisement would understand that the advertisement communicates that the products on the shelf below are priced from R179, and not that all the products are R179.

**Based on the above the commercial does not contravene Clause 4.2.1 of Section II of the Code.**