

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Bryan Jones
Advertiser	OUTsurance Insurance Company Limited
Consumer/Competitor	Consumer
File reference	230 - OUTsurance - Bryan Jones
Outcome	Upheld
Date	10 June 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Bryan Jones against a television commercial for OUTsurance.

Description of the advertising

The commercial features 42-year-old “Ricky” from Gauteng driving his 2002 Volkswagen Golf 4 while being interviewed by television presenter Katlego Maboe about his experience switching to OUTsurance. It shows that he used to pay R1667 per month with his previous insurer, and that he now pays R362 per month with OUTsurance, resulting in a saving of R1305 per month. At the end of the commercial, the following disclaimer appears on-screen: “Premium quoted is risk profile dependent. Ts and Cs apply.”

Complaint

The Complainant submitted, firstly, that OUTsurance should provide checkable evidence that the competitor's premium is genuine, who provided it and when, given the big difference in the premiums displayed in the advertisement.

Secondly, the Complainant submitted that OUTsurance is not clearly indicating in the advertisement which specific model of vehicle is being compared here. He argued that it would be all too easy, for instance, to have one premium aired which was for a Golf 2 GTi (the 'competitor's' premium), and the OUTsurance premium being for a much less costly, lower performance, lower risk model Golf 2 such as the cheaper, smaller engine capacity 1.6l petrol model.

Thirdly, the complainant questioned how the viewer is supposed to know that the person for whom these two premiums were provided is the same individual with the same insurance risk profile, same address, same age, gender, profession, etc.

The Complainant argued that without supporting evidence as to the advertisement's accuracy, the advertising is misleading.

Response

The Respondent submitted that the advertisement is part of OUTsurance's "switch and save" advertising campaign which advertises short term insurance in respect of motor vehicles. The current complaint is about the advertisement whereby an actual client of OUTsurance, Mr Ricky Moodley, provides a testimonial on the amount he saved after switching from his previous insurer (Dial Direct) to OUTsurance.

The aim and purpose of the "switch and save" campaign is to illustrate to potential clients that there is a real possibility (which has been experienced and evidenced by actual clients) that they may, depending on their specific risk profile, save on their car insurance premiums if they do a quote with OUTsurance and switch insurers as a result.

It is clearly evident from the disclaimer, "*Premium quoted is risk profile dependent. Ts and C's apply*", that quotes are subject to and dependent on various factors which would vary from individual to individual. Any hypothetical consumer would appreciate that premiums and

savings which potential clients could attain are dependent on the specific risk profile of that client. It is also imperative to recognise that the advertisement at no stage provides any guarantee, either directly or by implication, that a consumer watching the advertisement would be guaranteed to save upon switching to OUTsurance.

The Respondent submitted that it is in possession of Mr Moodley's Dial Direct Policy schedule, as well as the OUTsurance Policy schedule, which allows for a direct premium comparison for this specific client. By comparing the two policy schedules, it is apparent that the premium paid by Mr Moodley with OUTsurance, compared to what he was paying, is substantially less, specifically R1305. The Respondent attached the two policy schedules and noted that this information is confidential as it contains the personal information of a third party, as well as intellectual property of OUTsurance in respect of its rating considerations.

The Respondent submitted that the Code, in particular Clause 4.1 of Section II, does not impose any obligation on the advertiser to publish or disclose this information to the general public. An advertiser merely needs to "hold in their possession documentary evidence", so there is no need for OUTsurance to disclose such information in the advertisement. OUTsurance has taken all the necessary measures to verify the information pertaining to the premiums offered by Dial Direct, and a proper background analysis and comparison was conducted by OUTsurance prior to the advertisement being aired. The information can therefore be used as objective substantiation for the representations made in the advertisement.

The Respondent noted that the policyholder on both policies is Mr Moodley, but pointed out that there is one difference on the policies between OUTsurance and Dial Direct which relates to who the "regular driver" of the vehicle was. On the Dial Direct policy Mr Moodley was noted as the regular driver, whereas on the OUTsurance policy, when undergoing the underwriting of the policy, Mr Moodley noted his wife, Mrs Moodley, as the regular driver. That said, when advertising a saving on the policy, the Respondent considered the actual premium on the respective policies and what the actual difference between the policies was, as opposed to a fictional like-for-like comparison.

It is OUTsurance's view that the use of the actual premium amount is a truthful presentation of what the actual position was in so far as the premium paid by the client with OUTsurance

and Dial Direct, irrespective of the noted regular driver. It argued that if it were to make use of a fictional “like-for-like” approach and advertise it as such, then that would be misleading and untruthful as there would be no actual policy documentation depicting the OUTsurance premium.

Nonetheless, even in the event that it utilised the “like-for-like” comparison and noted Mr Moodley as the regular driver, the difference in the savings would have been a minimal amount of R23,46, which is immaterial as it does not drastically affect the amount of saving that Mr Moodley would have gained had the Respondent used the “like-for-like” approach with the higher premium instead. The saving amount would have been R1281,54, which would still result in a significant saving. The Respondent provided a table setting out a fictional like-for-like comparison with Mr Moodley as the regular driver.

With regard to the Complainant’s comments that the advertisement fails to indicate the specific model of vehicle, the Respondent submitted that the advertisement clearly provides a visual confirmation stating that the vehicle was a 2002 Volkswagen Golf 4. It appears that the Complainant is insinuating, by using the words “model”, that the advertisement fails to indicate whether Mr Moodley’s vehicle is one which runs on petrol or diesel, or that the engine size of the vehicle is not portrayed in the advertisement.

The model of the vehicle is irrelevant considering an actual comparison is being performed for that particular client on his 2002 Volkswagen Golf 4. The advertisement is not depicting or portraying what the general public of a certain profile could expect to pay in premium on a specific model vehicle, but instead focuses on actual savings by the policyholder for his specific vehicle. As such not mentioning whether the vehicle is a 1.4 or 1.6 litre (or any other variant) is not material and irrelevant for the purposes of this particular advertisement.

Application of the Code of Advertising Practice

The following clauses were 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.

Clause 4.2.1 of Section II states that 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.

The Directorate starts by noting several points in relation to this advertising campaign in general:

- The Directorate agrees with the Complainant that the consumer should be able to presume that the same vehicle is being compared, with the same type of insurance;
- It also agrees with the Respondent that the full details of this comparison do not have to be documented in the commercial itself. It is sufficient for the Respondent to be able to substantiate its claims when called upon to do so.

The documentation submitted by the Respondent shows that Ricky Moodley, the person appearing in the OUTsurance advertisement in question, saved R1305 per month on his insurance premiums for his white 2002 Volkswagen Golf 4 (presumably the vehicle showed in the advertisement) when he switched from his previous insurer to OUTsurance. Both policies are for the same policy holder and the same vehicle. The Complainant's grounds of concern on these issues are therefore addressed.

The Directorate recently dealt with another, similar complaint about one of OUTsurance's "switch and save" television commercials in the matter of OUTsurance – Vincent van Zyl. In that matter, the Directorate "carefully checked that the insurance was in fact for the same person, the same vehicle, and *similar in nature*" (our emphasis), and found that the advertisement was not misleading.

In the present matter, on the other hand, there appear to be three clear differences between Mr Moodley's previous insurance policy and his policy with OUTsurance. The first difference was pointed out by the Respondent, i.e. the fact that Mr Moodley was the "regular driver" on the previous policy, whereas Mrs Moodley is the "regular driver" on the OUTsurance policy. Secondly, both the basic excess and the windscreen excess on the OUTsurance policy are

slightly more than those of the previous policy. The third difference is that the OUTsurance policy includes cover for the car's radio/sound system, which the previous policy did not have.

Presumably the first two factors would have lowered Mr Moodley's premium with OUTsurance compared to if he were the regular driver and if the excesses were lower, resulting in a bigger saving. Then again, the inclusion of radio/sound cover would presumably increase his premium, resulting in a lesser saving. The Directorate also accepts that different insurance companies may offer slightly different cover in terms of excesses and cover, and that the aim would be to compare the *most similar* cover that is available. The question of the excesses and the radio cover therefore do not concern the Directorate unduly in this particular case, especially as the two presumably set each other off to some degree.

The Directorate is, however, concerned about the fact that the regular driver in the policy has changed from Mr Moodley to his wife. From the response it appears that the actual nett effect of the various differences comes down to a relatively insignificant amount of R23,46, being the difference between Mr Moodley's actual premium with OUTsurance and what his premium would have been if his OUTsurance policy was an exact match.

The Directorate agrees with the Respondent that for all practical purposes, the difference between a saving of R1305 versus R1281,54 is not that significant. The overall communication of a large saving is still correct. However, the communication of the commercial is that the comparison is like-for-like, and *that* communication is misleading – the change of regular driver is a material difference which is not communicated. Not only is this not communicated, the fact that Mr Moodley is driving in the commercial implies that he is still the regular driver of the vehicle.

While the Directorate recognises that the principle communication of the saving is not significantly affected in this particular case, it must also take into consideration that in some cases, a change to regular driver will result in a material change to premium. It is therefore impossible to say that it is not a material factor in a like-for-like comparison, and the implication of the commercial is that it is a like-for-like comparison.

Given that there is no indication in the commercial that there are differences between Mr Moodley's previous policy and his OUTsurance policy that affected his premium, a

reasonable consumer would expect the policies to be materially similar, and would think that on all significant measures, the comparison is like-for-like, which is not the case.

The Directorate recognises that a saving this impressive is one that is of interest to consumers in the context of this campaign, and this ruling should not be interpreted to mean that the Advertiser cannot use examples of this type. However, the material then needs to communicate the material differences in the comparison, whether in the dialogue or by way of on-screen disclaimers.

In light of this, the commercial communicates the OUTsurance client's saving in a misleading manner, however insignificant the resulting difference may be in practice. In principle the advertisement is misleading, and it therefore contravenes Clause 4.2.1 of Section II.

Sanction

The Advertiser is instructed to:

- Withdraw or amend the television commercial in its current format within the deadlines set out in Clause 15.3 of the Procedural Guide, which is “immediately as deadlines permit”;
- Begin the process to withdraw or amend the commercials immediately.