

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Bernard Botha
Advertiser	Snatcher Online
Consumer/Competitor	Consumer
File reference	Snatcher - Bernard Botha
Outcome	Dismissed
Date	24 May 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Bernard Botha against the online advertising of Snatcher Online.

Description of the advertising

A “Spicy Shelf” was advertised on www.snatcher.co.za on 27 March at a sale price of R119,00, down from R259,00. At the top of the webpage it said “Flash Sale!”, and below the images, video and description of the product, it said “Deal of the Day”, with a timer counting down.

The next day, the same product was advertised on the website for R109,00, with the words “Flash Sale!”, “Deal of the Day”, and the countdown timer appearing again.

Complaint

The Complainant submitted that he visited the Snatcher website on 27 March and wanted to buy the Spicy Shelf. He argued that the words "flash sale", together with the words "deal of the day" and a countdown timer, created the impression that the deal was available for a limited amount of time, and that he should act fast. He did not buy the product, but when he visited the website a day later he was horrified to see that the Spicy Shelf was again a "flash sale" and "deal of the day" with a countdown timer.

The Complainant submitted that it appears that Snatcher is falsely misleading consumers into thinking that the deals are only available for a limited period, when they are in fact available for extended periods.

Response

The ARB was unable to secure a response from the Advertiser.

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 has not responded in this matter and the ARB will therefore assume that it does not consider itself bound by the ARB and the Code of Advertising Practice.

The Memorandum of Incorporation of the ARB states:

“3.3 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.”

In other words, if you are not a member and do not submit to the jurisdiction of the ARB, the ARB will consider and rule on your advertising for the guidance of our members.

The ARB will, however, rule on whatever is before it when making a decision for the guidance of its members. This ruling will be binding only on ARB members and on broadcasters in terms of the Electronic Communications Act.

The ARB will therefore proceed to consider this matter for the guidance of its members.

Merits

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 dilemma for the Directorate in this matter is that, on the one hand, it is not convinced that advertising the same “Deal of the Day” two days in a row is automatically misleading. It appears that the advertised “sale” prices were in fact discounted prices, and it is not in

dispute that the product was actually available on each day at the advertised price. The consumer is therefore not misled as to the nature and availability of the advertised item.

On the other hand, at some point advertising a “daily” deal for multiple days in a row has the potential to be misleading, so the line has to be drawn somewhere.

In the present matter, however, the product was advertised on two consecutive days *at different prices*. Accordingly, the “daily deal” advertised on 28 March is a different “daily deal” to the one advertised on 27 March.

In light of the above, the Directorate finds that Snatcher Online’s advertising was not misleading for the reasons put forth by the Complainant, and therefore did not contravene Clause 4.2.1 of Section II.