

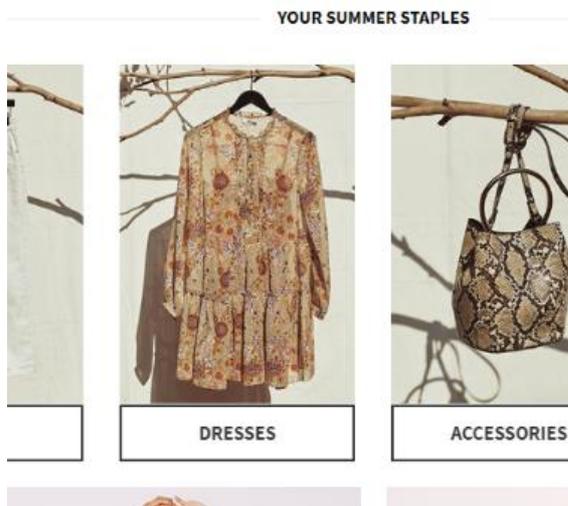
Decision of the ADVERTISING REGULATORY BOARD

Complainant	Celene Wynne
Advertiser	Superbalist.com
Consumer/Competitor	Consumer
File reference	528 – Superbalist – Celene Wynne
Outcome	Dismissed
Date	7 November 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Celene Wynne against online advertising for Superbalist.

Description of the advertising

The advertisement included the following image:



Complaint

In essence, the Complainant submits that the featured dress was not actually available.

Response

The Advertiser responded and submitted, in essence, that:

- It is not a member of the ARB or bound by its rulings, but it has chosen to respond as it is a customer-centric business;
- It provided an image and URL link to the advertised product. The product is no longer available as it is now out of stock, but it was available at the time that the complaint was lodged.
- It would appear that the complainant was given incorrect information by the call-centre agent.

Application of the Code of Advertising Practice

The following clauses were considered in this matter:

Misleading claims – Clause 4.2.1 of Section II

Non-availability of advertised products – Clause 31 of Section III

Decision

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

Jurisdiction

The Advertiser has submitted 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

The simple question before the Directorate is whether the featured dress was in fact available, or whether it was used as bait advertising to induce people to look further.

The Advertiser has provided proof that the dress is indeed listed on the site; and the Directorate has no reason to believe that the dress was already sold out at the time of advertising. The Directorate has tested the link and it does indeed show the dress, reflecting that it is sold out.

The Directorate notes the following:

- It would appear that the Complainant received incorrect information from the call-centre. This is not an advertising issue;
- The site lists, at the time of writing, 2183 available dresses. It is easy to see how a consumer might struggle to find a particular item;
- While it would perhaps be a good idea for featured items to appear early in the search results, the failure to do so does not render the advertising misleading.

Given the above, it would appear that the advertised dress was available at the time of advertising and that the advertising was therefore not in breach of Clause 4.2.1 of Section II or Clause 31 of Section III.