

Decision of the ADVERTISING REGULATORY BOARD

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| Complainant | Christiaan Behr |
| Advertiser | Takealot.com |
| Consumer/Competitor | Consumer |
| File reference | Takealot – Christiaan Behr |
| Outcome | Upheld |
| Date | 6 August 2019 |

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Christiaan Behr against advertising on the Takealot.com website.

Description of the advertising

The advertising is pictured below:

The screenshot shows the Takealot.com website interface. At the top, there's a navigation bar with 'takealot.com', 'Help', 'Sell on Takealot', and user information for 'Hi Christiaan (that's not me)'. Below this is a search bar and a 'Shop by Department' dropdown. The main content area displays a product page for a 'Bushtec - Nomad Bow Tent - Brown'. The product image shows a brown and green tent. To the right of the image, the product name and price are prominently displayed: 'R 2,999' with a '62% OFF' badge and 'FREE DELIVERY'. Below the price, there's a 'Add to Cart' button and an 'Add to Wishlist' button. The product details include dimensions (300 x 300 x 210cm) and a 1-Year Limited Warranty. The page also shows a breadcrumb trail: 'Camping & Outdoors / Tents & Shelters / Dome Tents / 4 To 6 Person'.

Complaint

In essence, the Complainant submits that the advertised discount is misleading. The discount is worked off the list price of R 7999, but the most expensive actual price that the Complainant could find for this product is R5000.

Response

The Advertiser responded and submitted that it is not a member of the ARB or bound by its rulings, but it has elected to respond as it is a customer centric business and committed to fair and honest advertising.

The Advertiser believes that the Complainant has misunderstood its pricing, and explains that it has three prices:

- The List Price, which is the recommended retail price provided by sellers. There is an information icon next to this price so that the consumer can access the explanation of this price.
- The everyday or normal selling price, which is the price that Takealot usually sells the product for, and which may vary.
- The Deal Price which is the discounted special price and is calculated against the List price and not the everyday selling price.

Given this, it submitted that the discount is correct. It also submitted that the product's everyday selling price of R 4 999 is competitive in comparison to other retailers.

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.

Jurisdiction

The Advertiser has submitted that it is not a member of the ARB and is not bound by its decisions.

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 issue before the Directorate is a very simple one: is the advertised discount of 62% misleading?

The following facts appear to be common cause:

- This product actually retails for prices from R3799 to R 5 284;
- This product normally sells on Takealot at R4999;
- The advertised sale price is R 2999;
- The discount of 62% is calculated against the list price;
- The list price is a price provided by the third part supplier and does not appear to reflect the market place.

The Directorate notes that there are two prices reflected on the advertisement: the sale price and the list price. The everyday selling price does not appear on the advertisement.

The advertisement claims, “62% OFF” and “SALE”.

The Directorate is of the opinion that the only reasonable interpretation that the hypothetical reasonable consumer could have is that they are saving 62%.

If this were offered in a shop, the Directorate would expect evidence that the shop had previously sold the product at the “undiscounted” price. The Directorate would have no interest in the recommended retail price or in the price that other shops sell the product at. The sale price is expected to be calculated against the price that the shop actually previously charged.

The fact that the Advertiser is an online retailer does not change this expectation: the correct price for calculating discounts is the normal selling price, and not the list price. This is especially so given that:

- It would seem that the list price does not necessarily bare any relation to what is going on in the market;
- The everyday list price does not even appear in the advertising to enable the consumer to make the correct comparison, although this alone would not correct the misleading impression.

What it comes down to is that the consumer is NOT in fact saving 62%. They are saving 40% (if it is indeed correct that the normal selling price is R4999) and this is what should be communicated to them.

The advertising is therefore misleading and in breach of Clause 4.2.1 of Section II.

Members of the ARB are advised not to accept this advertising for publication.