

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Lisa Moyers
Advertiser	Takealot.com
Consumer/Competitor	Consumer
File reference	Takealot – Lisa Moyers
Outcome	Upheld
Date	6 August 2019

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

Description of the advertising

The advertising is pictured below:

Complaint

In essence, the Complainant submits that the advertised discount is misleading. The discount of 45% is worked off the selling price of R999, but the supplier lists R549 as its selling price.

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 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.

The Advertiser also submitted that the supplier has confirmed the list price on its own website.

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 45% misleading?

The following facts appear to be common cause:

- The discount of 45% 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, “45% 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 45%.

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 45%. The Advertiser has not provided the everyday selling price, so the Directorate is unclear what the saving in fact was.

The Directorate also notes that the material submitted by the Advertiser showing that the supplier also reflects the list price is somewhat perplexing. When the Complainant accessed the supplier’s site, the price was simply listed at R 549. The site subsequently appears to have been amended to list the “was price” and “price”.

Be that as it may, what is clear is that the product did not appear to actually retail at the list price on the Advertiser’s site, or anywhere else.

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

This said, the Directorate accessed the current advertising for this product (<https://www.takealot.com/multi-functional-baby-nappy-bag-backpack-set-grey/PLID53564799>). It does not reflect any discount, nor does it reflect a list price. It reflects the straightforward selling price of R455. In so far as this product is concerned, at least, the issue is no longer pertinent, and no action is required.