

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Nithia Naidoo
Advertiser	Volkswagen Financial Services South Africa (Pty) Ltd
Consumer/Competitor	Consumer
File reference	169 – VW – Nithia Naidoo
Outcome	Upheld
Date	4 June 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint by Nithia Naidoo against the Advertiser’s website advertising promoting its ‘Guaranteed Future Values (GFV) on Volkswagen Cars’ special deal for February.

Description of the advertising

The advertised product is a GTD TDI 130kw DSG Model. The advertising stated the monthly instalment as R 5 440 and displayed the following information:

Interest Rate*	GFV	Vehicle Price	Instalments	Deposit	Total Cost of Credit
5.4%	R343.655	R528,700	36	11.24%	R539,500

Complaint

The Complainant submitted that the dealership has indicated to him that it cannot ever give him the vehicle at the stated price as the stated price is for a standard model without any extras. The Advertiser only has models which include extras which still need to be added to the price. A standard model specification with no extras will need to be ordered from the factory with a waiting period of 3 months and most likely to come with a price increase if one waits the 3 months. Further, the special was only valid for February.

Response

The Advertiser submitted that in its view, the advertising in question does not contain any misleading claims. As per advertising standards for financial deals, the advertised deal included a disclaimer that clearly states that the instalment amount is based and calculated on “standard specification” and “subject to credit approval.” The advertising also includes mileage restriction in the Guaranteed Future Value (GFV) offer.

The final instalment amount is impacted by the following:

- Inclusion of any OEM/factory fitted extras on the vehicle
- The customer's risk profile which determines the customer's interest rate
- The deposit amount,
- The contract term/period
- The chosen contract mileage for this GFV offer

Given the number of factors that impact final instalment amounts, it is not practical to advertise every possible monthly instalment option as there are innumerable variations possible. Volkswagen Financial Services South Africa (Pty) Ltd (VWFS SA) is, therefore, not advertising falsely or making misleading claims as this offer is based on a basic model.

Given the combinations of extras that consumers can choose from are vast, it has deemed it appropriate to advertise a base vehicle and to include a relevant disclaimer as it has done in this instance. As a rule, VWSA SA's finance offers uploaded onto the Advertiser's website are always calculated on a base vehicle with no extras. Furthermore, face-to-face engagements occur between the client and the dealership wherein the client has further opportunities to obtain clarity and further details on any aspects of the advertised offers.

In respect of the non-availability of the advertised product at a particular dealership, the disclaimer states that the offer is valid on available stock. Given the nature of the motor vehicle industry it is not always possible to get the exact model, specification, colour etc. from every dealership. The advertising clearly states that the offer is valid for a specific month based on available stock, this is

because dealerships may have limited stock and would have to source the vehicle from elsewhere if the customer does not want the vehicle that is currently on offer.

The Advertiser referred the Directorate to the previous decision of the ASA (Hatfield VW / N Chetty / 2018-8213F) and submitted that the principle established therein was correct in finding that the nature of the advertising in question was in order.

Application of the Code of Advertising Practice

The following clauses were considered in this matter:

Misleading claims - Clause 4.2.1 of Section II

Pricing policy – Inclusiveness - Clause 19.2 of Section II

Decision

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

The following facts seem to be undisputed in the complaint and the response:

- The Complainant could not get the advertised deal at the time of the advertisement due to non-availability of the standard model;
- He could order the model, but that would involve a waiting period;
- The waiting period would mean that the deal, which was valid for a month,

would no longer be valid.

The Directorate accepts that any car dealership or manufacturer will not have every available permutation of the vehicle available at any given time. It also accepts that with the number of features available, a standard model may be an unusual request and a customer wanting such a model will have to wait while that model is produced. Finally, it accepts that it is a matter of convenience to phrase an offer based on the base vehicle with no extras, and that a consumer would understand that the addition of any extras would result in a different price. But the Code of Advertising Practice requires that the advertised deal is available, as advertised.

This does not appear to be the case in this matter.

It is acceptable – although not ideal - that the consumer may have had to wait for the advertised vehicle to be ordered, as none were currently available. What is not acceptable is that the wait would render the offer invalid. In other words, the Advertiser promotes a specific ‘special deal’ knowing very well that it is not possible for any customer to obtain such deal.

The Directorate of the Advertising Standards Authority dismissed the complaint in the *Hatfield* matter because the Complainant in that matter wanted to pay less deposit than what was advertised, and pay over a shorter time. In that case, he could not then reasonably expect to pay the same monthly instalment. There is nothing in this matter that indicates the Complainant did not wish to purchase the vehicle advertised on the exact terms advertised, or did not qualify for the applicable credit.

The Advertiser has provided disclaimers that it alleges appeared with the advertisement, which are not apparent from the material submitted by the Complainant. The Directorate was also not able to find a similar example of advertising on the Advertiser’s website to confirm that appearance of these disclaimers. However, given the finding below, this concern falls away.

The Advertiser's argument that the disclaimer states that 'the offer is valid for a specific month based on available stock' is dismissed on the basis it does not appear that the advertised motor vehicle was out of stock as a result of unexpected demand following the advertisement. It appears from the material before the Directorate that the advertised deal was simply not available, and there is no evidence before the Directorate that *any* consumer secured the advertised vehicle at the advertised price.

In essence, the Advertiser promotes a base model deal on a special for February month but does not have the base model in stock, and will not be able to supply the base model at the advertised price.

In the circumstances, the Directorate finds that the advertising is misleading and in contravention of Clauses 4.2.1 and 19.2 of Section II of the Code of Advertising Practice.

The deal has expired and the advertising is not in use. The advertiser is therefore instructed to take this decision into account in preparing future offers.