

## Decision of the ADVERTISING REGULATORY BOARD

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|---------------------|---|
| Complainant         | Suhail Suleman                                |
| Advertiser          | We Group Africa (Pty) Ltd t/a We Drill Africa |
| Consumer/Competitor | Consumer                                      |
| File reference      | We Drill – Suhail Suleman – 16 – 01 – 19      |
| Outcome             | Upheld  |
| Date                | 19 February 2019                              |

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Suhail Suleman against the website advertising of We Drill Africa.

### Description of the advertising

The following claims appear on the website:

- We have portable rigs that can fit through a gate, trailer mounted rigs for tight spaces as well as large truck rigs for deeper holes.
- WE DRILL continues to invest in the newest technology available and our fleet is continually being upgraded as we try to keep up with the overwhelming demand.

The logo of the Borehole Association of South Africa appears on the website.

## Complaint

The Complainant submitted:

The company's advertising/website is false and misleading for the following reasons:

- 1 - They have only been doing boreholes for one year
- 2 - They do not own their own rigs but outsource to third parties to complete the job
- 3 - They have no public liability insurance
- 4 - They are NOT a member of the Borehole Water Association of South Africa. They were thrown out of the association in September 2018.

He submitted that the business is a scam that takes deposits and does not complete work.

## Response

Despite all reasonable efforts, the advertiser did not respond to the complaint.

## 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 Directorate notes that the Advertiser has not responded to the complaint.

The Directorate will therefore work on an assumption that the Advertiser does not consider itself bound by the ARB. In this regard we note as follows:

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 requires that advertising “should not contain any statement . . . which directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer.”

The Complainant has submitted certain allegations. The Directorate starts by noting that its mandate is limited to looking at the content of advertising. In other words, we can determine whether the content of advertising is misleading – but we cannot go beyond that enquiry into the business processes of an advertiser.

We therefore turn to look at the allegations made by the Complainant:

- 1 - They have only been doing boreholes for one year
- 2 - They do not own their own rigs but outsource to third parties to complete the job
- 3 - They have no public liability insurance
- 4 - They are NOT a member of the Borehole Water Association of South Africa. They were thrown out of the association in September 2018.

The Directorate notes that there do not appear to be any claims on the website that state or imply that they have been doing business for more than one year. This ground of complaint therefore falls away. Similarly, the Directorate can find no reference to public liability insurance. While this may be a legal and business issue, it only becomes an advertising issue if the advertiser claims to have such insurance when they do not.

What the Directorate is left with is the implication that the Advertiser has its own equipment, made in the claims cited above, and the use of the Borehole Water of South Africa logo.

## **Borehole Water of SA Membership**

The Complainant provided an email from BWA confirming that the Advertiser is not a member.

In a situation like this, the Directorate would expect that Advertiser to provide proof that it is a member, or some explanation as to the situation.

In this case, the Directorate has nothing before it except the complaint, which is supported by a collaborating email. We therefore have no choice but to conclude that the complaint is correct and that the Advertiser is not a member of the Borehole Water Association of South Africa.

**The use of the logo is therefore misleading and in breach of Clause 4.2.1 of Section II.**

## **The equipment**

The following relevant claims appear on the website:

- We have portable rigs that can fit through a gate, trailer mounted rigs for tight spaces as well as large truck rigs for deeper holes.
- WE DRILL continues to invest in the newest technology available and our fleet is continually being upgraded as we try to keep up with the overwhelming demand.

The Directorate notes that there is no requirement that a company owns its own equipment, provided they can get the job done. However, in this case, the implication of the above claims IS that the Advertiser owns and continues to acquire its own equipment.

The Complainant alleges that this is not the case, and the Advertiser has again provided nothing to contradict this assertion. The Directorate therefore has no choice but to accept that the Complainant is correct.

In the circumstances, the claims in question are misleading and in breach of Clause 4.2.1 of Section II.

### Sanction

Members of the ARB are instructed not to accept the advertising complained of for placement or dissemination.