

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Jean Kuebler
Advertiser	WeBuyCars (Pty) Ltd
Consumer/Competitor	Consumer
File references	482 - WeBuyCars – Jean Kuebler
Outcome	Dismissed
Date	21 October 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Jean Kuebler against an online advertisement for WeBuyCars.

Description of the advertising

The advertising states, *inter alia*:

“What’s your car worth?

GET A FREE VALUATION.

No obligation. We come to you!

WEBUYCARS.COZA

Selling your car?

We Come To You Wherever You Are. Get A Free Valuation Today.”

Complaint

The Complainant submitted that, on his inquiry, the Advertiser refused to do to a valuation. The Advertiser only inspects a vehicle to make an offer to purchase a car. The Complainant submitted that one would expect a dealer who advertises free valuations to actually provide a valuation and not just do what every second hand dealer will do, that is, make an offer to purchase. If the Advertiser does not provide a valuation, it should not advertise that it provides free valuations.

The Complainant further argued that he was misled by the advertising as he travelled to the Advertiser's premises to obtain a valuation for insurance purposes. The Advertiser refused to provide a valuation, whether confirming a trade-in value or otherwise. The advertising clearly states that the valuation is obligation free. That it is not linked to the Advertiser purchasing a vehicle.

Response

The Advertiser submitted that it is not a member of the Advertising Regulatory Board and therefore does not consent or deem that rulings made by the Advertising Regulatory Board is binding upon it. The Advertiser, however, chose to provide its response to the complaint.

The Advertiser submitted that its business model pertains to the purchasing and selling of second-hand vehicles. This is already indicated in its name and through a glance at its website (www.webuycars.co.za). In the advertisement in dispute, the following wording is used: *"get a free valuation, no obligation, we come to you"*. The Advertiser argued that it is clear from the above wording that the valuation is aimed at buying a consumer's vehicle and therefore a valuation will be provided for the purchase price that the Advertiser is willing to pay for the consumer's vehicle.

The definition of 'valuation' is wide and encompassing and includes *"the estimation of the worth of something"*. It is a commonly used word in the second-hand motor vehicle industry when referring to the value that a second-hand dealer is willing to pay for a vehicle. In light of the above, the Advertiser submitted that the advertising is not misleading to the reasonable consumer.

Application of the Code of Advertising Practice

The following clause was 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.

The Memorandum of Incorporation of the Advertising Regulatory Board states:

“3.3 The Company has no *jurisdiction over any person or entity who is not a member of the ASA and that the ASA 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 the advertiser is not a member and does not submit to the jurisdiction of the ARB, the ARB will consider and rule on the advertising for the guidance of its ARB’s members. The ARB will, however, rule on whatever is before it when making a decision for 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 of the Code provides that, “*Advertisements should not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer*”.

The dispute in this matter is around the use and interpretation of the wording “*get a free valuation, no obligation*”. The Complainant is of the view that the Advertiser should provide a ‘valuation certificate’ that may be accepted by other authorities or entities for commercial purposes; whereas the Advertiser is of the view that, in its industry of second hand vehicle trading, the word ‘valuation’ refers to viewing and assessing the value the dealer is willing to pay the customer for the offered vehicle.

Clause 3.2 of Section I of the Code provides that “*in assessing the impact of the advertisement’s conformity to the terms of this Code, the primary test applied will be that of the probable impact of the advertisement as a whole upon those who are likely to see or hear it. Due regard will be paid to each part of its contents, visual and aural, and to the nature of the medium through which it is conveyed.*” Clauses 3.3.1 and 3.3.2 of Section I of the Code provides that the ARB may consider the surrounding circumstances and that the language used in the advertisement as a whole may justify departure from the literal meaning thereof.

The Directorate firstly notes that in the advertising submitted by the Complainant, the words “Selling your car?” appear immediately below the offer of a free valuation. On the actual website, the words “Sell my car” appear above the offer for free valuation. This immediately alerts the consumer that the word “valuation” is used in the context of selling one’s car.

The Directorate also accessed the Advertiser website and clicked on ‘About’. There are 8 sub-topics and the first one is “How it works”. The click on this sub-topic immediately shows the heading, “How to Sell Your Car- The Easiest Way to Sell Your Vehicle”. Below this heading, there is a sub-heading, “Let us show you how it works”, and this is followed by a snake road map with applicable icons to each step. Below the “snake’s tail”, the following heading is shown: “Hints”. The following information appears thereunder:

“How we make the process smoother.

- *We buy vehicles throughout the entire South Africa!*
- *We buy ANY type of vehicles including, but not limited to, Cars, Motorbikes, Caravans, Trailers, Boats, Busses and Trucks.*
- *We only purchase vehicles in a working condition.*
- *You are not required to do a roadworthy test on your vehicle.*

- *To purchase your vehicle, we require a copy of your ID, proof of address (not older than three months), a copy of your NATIS (vehicle registration papers) and an updated settlement letter (if the vehicle is still on finance).*
- *We do all the paper work for you.*
- *We purchase your vehicle with immediate payment.”*

From the above information, and other explanations on the website, it is clear that the business model of the Advertiser is to buy and sell second hand vehicles. The hypothetical reasonable consumer would interpret the claim in this context.

There is nothing on the Advertiser’s website purporting to offer any other services than buying and selling vehicles. Specifically, it does not offer to do insurance valuations.

The Directorate also questioned whether the “quote” provided for by the advertiser might, nonetheless, be able to be used for insurance purposes, subject to the specific requirements of the insurance company. There is nothing before the Directorate to show that the Complainant could not have obtained the quote, and submitted it to the insurance company to motivate that value. If the insurance company has specific requirements in that regard, it was incumbent on the Complainant to use a service provider that could comply with those requirements. As stated, the Advertiser does not claim to be such a provider.

The Directorate did question whether the word “valuation” is perhaps not the best word that could have been chosen to describe the offer the Advertiser is making. It is true, as submitted by the Complainant, that one use of the word “valuation” is in the context of “insurance valuations”. However, that being said, the reality is that “valuation” is a good description of what the Advertiser is offering. They will value what they will pay for the car. They do not amplify that offer to include “insurance valuations”.

It is therefore the Directorate’s view that the probable interpretation of the word “valuation”, as contained in the advertising, would mean ‘the estimated value the Advertiser is willing to pay for a vehicle’, and not the insurance meaning as alleged by the Complainant.

In the circumstances, the Directorate finds that the advertising is not misleading and therefore not in contravention of Clause 4.2.1 of Section II of the Code of Advertising Practice.