

Decision of the ADVERTISING REGULATORY BOARD

Complainant	William Gets
Advertiser	Chaska Homes
Consumer/Competitor	Consumer
File reference	564 – Chaska Homes – William Gets
Outcome	Upheld
Date	26 November 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint against online advertisement for Chaska Homes on Property24.com.

Description of the advertising

The advertisement appears below:

R 2 495 000 | **3 Bedroom House for Sale in Tokai**
Tokai, Cape Town

Cont
Jean
082 8
Jean
jean
Ager
Chasi

Immaculate & spacious family home

618 m²

Complaint

In essence, the Complainant submits that the advertised property is not in Tokai but the nearby area of Retreat Industria, and the road where the property is situated is very run down compared to those in Tokai.

Response

The Advertiser advised, *inter alia*, that:

- The property is indeed in the area called Retreat;
- Over the last 20 years, this area has become known as Tokai;
- This is a challenge in various areas, where neighbouring areas take on the name of another area;
- Many businesses in the area have “Tokai” in the name;
- Most Estate Agents refer to this area as Tokai;
- The agent immediately informs any callers, such as the Complainant, exactly where the property is – in the “lower part of Tokai”. Most callers then decide whether the property is still of interest to them, but do not take issue with the advertisement.
- It would be a disservice to the seller of the property and misleading to the consumer to not list this property as being in Tokai.

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.

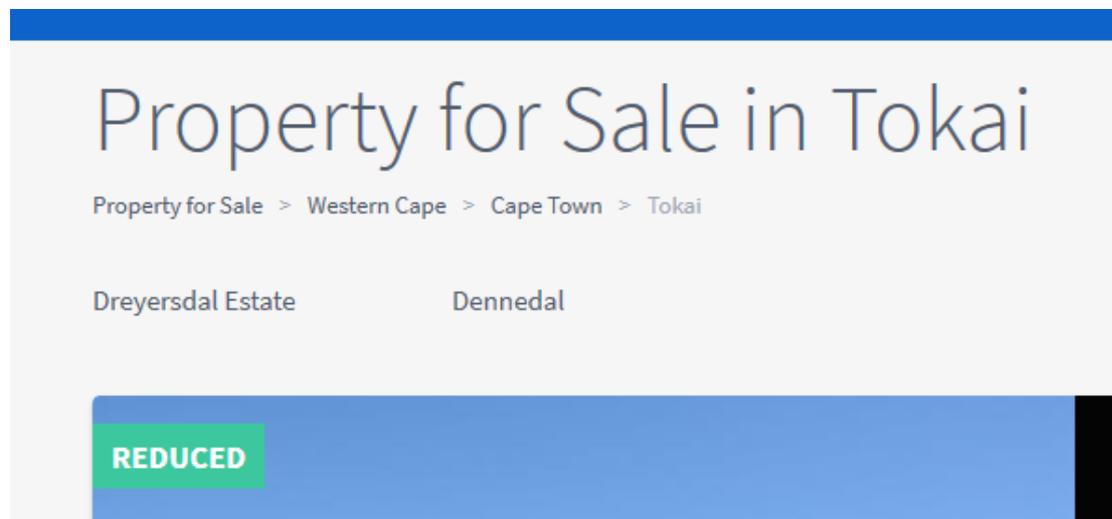
The question before the ARB in this matter is a simple one: Is the reference to Tokai in the advertising misleading?

It appears to be a matter of fact that the property, on a formal municipal analysis, falls within Retreat and not Tokai.

It also appears to be a matter of fact that many businesses in this area regard themselves as being the “Tokai” branch, and that Estate Agents list properties in this area as falling under Tokai. It would appear that Tokai is regarded as a more desirable area than Retreat. The Directorate has some sympathy to the position the Estate Agent is in: the area is known colloquially as Tokai; there is business sense in calling the area Tokai, and many consumers are happy to regard that area as Tokai. But the Directorate comes up against one unavoidable fact: the area is not, in fact, Tokai.

The Directorate notes that the advertisement lists the area as Tokai not once, but twice. It contains no clarity or disclaimer such as listing “Tokai/Retreat” or “Tokai (Retreat)” or “Tokai* *Retreat side”. Any of these would serve to attract the buyer looking at the Tokai-and-surrounds area; but alert them to exactly where the property in fact is situated.

The Directorate notes that the Advertiser referred it to a number of examples of other agents using the Tokai label, and that one of these did, indeed, clarify the situation within the advertisement. This property that is actually in Dreyersdal is the example:



The Directorate also considered that the implications of the advertising, which are wider than simply inquiring about a property in the “wrong” area. A buyer who does not have the situation clarified, for whatever reason, may end up buying a property that does not have the resale or investment value that the buyer believes it to have based on its “Tokai” location.

The Directorate is sympathetic to the situation the Advertiser finds itself in where “everybody else does it”, but the reality remains: the property is not in Tokai, and nothing in the advertisement indicates that the reference to Tokai is in the colloquial, “Tokai-and-surrounds” sense.

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

Sanction

The Advertiser must withdraw or amend the advertising referred to within the deadlines stipulated in Clause 15.3 of the Procedural Guide. In the case of internet advertising, the time given is “two weeks or as determined otherwise by the [ARB]”. The Directorate is of the opinion that this material is within the control of the Advertiser, and can be updated or amended with ease. The deadline is therefore set as within 4 (four) days of receipt of this decision.