

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Geoff Burmeister
Advertiser	Flight Centre Travel Group (Pty) Ltd
Consumer/Competitor	Consumer
File references	81 – Flight Centre – G Burmeister
Outcome	Dismiss
Date	9 April 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint by Geoff Burmeister against SMS advertising for the Flight Centre’s “BLACK FRIDAY HOT DEALS ALERT” promotion.

Description of the advertising

The SMS states: “*BLACK FRIDAY HOT DEALS ALERT* Early boarding in progress. Fly to Dubai, direct fr R4490, Rome fr R5990 or Bangkok fr R6440. Call Flight centre NOW 0877405104”.

Complaint

The Complainant submitted that he went to the Advertiser's store to book his flight to Dubai and was told the deals did not exist. He was told to pay the normal fare.

Response

The Advertiser submitted that it is not a member of the Advertising Regulatory Board and does not consent it to its jurisdiction. Good governance and its reputation are of extreme importance to it and therefore would like to provide a response to the complaint.

On 22 November 2018 it advertised, via sms, the offer in question to its entire database including the Complainant. The Advertiser denied that its advertising was misleading or that the flights were not available at the advertised prices. The Advertiser booked nineteen flights to Dubai, eleven to Rome and one to Bangkok at the advertised price on 22 and 23 November 2018. The Complainant, on his own admission, approached the Advertiser's store during the afternoon of the 23rd of November 2018 due to the fact he was travelling. At this time, the flights, at the advertised price, to Dubai had been sold out and the Complainant elected to buy alternative more expensive tickets. Unfortunately all flights advertised are subject to availability with the airline and can be sold out as per the terms and conditions on the attached email. The Advertiser provided the Directorate with said email.

The Advertiser also provided the Directorate with the affidavit confirming the number of flights it booked to the advertised destinations at the advertised prices.

Application of the Code of Advertising Practice

The following clauses were considered in this matter:

Misleading Claims – Clause 4.2.1 of Section II

Non – Availability of advertised products – Clause 31 of Section III

Decision

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

Jurisdiction

The Advertiser submitted that it is not a member of the ARB and does not consent to its jurisdiction.

Clause 3.3 of the Memorandum of Incorporation of the ARB provides that “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.”

The Directorate will therefore proceed to consider this matter for guidance of its members.

Merits

The question before the Directorate is whether the advertising was misleading and in breach of Clause 4.2.1 of Section II. In other words, was the advertised offer in fact not available.

The Directorate starts by noting that the SMS went out on 22 November and that the Complainant visited the store in the afternoon of the 23rd. Timing is of great importance in this industry especially with special or promotional offers. The reality is that, with online booking being the norm, a special offer of this type will sell out within hours of being advertised. It is therefore understandable that the Complainant may not have been able to secure the offer. The remaining question is whether the offer was indeed available and provided to other customers.

During investigations of the matter, the Directorate requested the Advertiser to provide documentary evidence in proving that a significant number of tickets were sold to consumers in consequence of the promotion. The Advertiser provided the Directorate with the affidavit of Natasha Webb, Brand Leader Air and Products, which confirms that, “On or about 22 November 2018 we launched an early black Friday sale where we advertised amongst other things flights to Dubai at R4490” and “I hereby confirm that Flight Centre Travel Group booked 28 flights to Dubai on behalf of our customers at this price.”

In the matter of FlySafair/Nicholas Shabangu, a similar situation arose and the Directorate held that “*the Directorate, having perused the spreadsheet, is convinced that indeed the Advertiser sold tickets on the special for R399. It is accepted that the practice of increasing prices based on customer demand is a norm within this industry worldwide. It is therefore accepted that the Complainant would not have seen or accessed the advertised special offer before 13:00 on the particular day. It is accepted further that special offers are on ‘first come first serve’ basis and prices increase on demand basis.*”

In this matter, the Advertiser has provided the Directorate with the affidavit confirming that 28 flights were booked in consequence of the promotion. It is therefore apparent that the advertised deals existed and the Complainant unfortunately only approached the store once the promotional tickets were sold out.

In the circumstances, the Directorate finds that the advertising was not in breach of Clause 4.2.1 of Section II or Clause 31 of Section III of the Code.