

## Decision of the ADVERTISING REGULATORY BOARD

Complainant	Sherlyn Titton
Advertiser	Kingsway College
Consumer/Competitor	Consumer
File reference	Kingsway College – Sherlyn Titton
Outcome	Upheld
Date	30 April 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Sherlyn Titton against Kingsway College’s website advertising.

### Description of the advertising

The complainant takes issue with the following claim:

## NURSING COURSES

In collaboration with the Health and Welfare Sector Education and Training Authority (HWSETA), Kingsway College endeavours to create an integrated approach to the development and provision of appropriately skilled health and social development workers, to render quality services comparable to world class

### Complaint

In essence, the Complainant submits that none of the nursing courses are HWSETA accredited courses and that the advertising is therefore misleading.

The Complainant provided a letter from HWSETA that states, *inter alia*, “During our telephonic conversation earlier today, both Keitumetse and I confirmed that our qualifications are not Nursing qualifications.

I have sent Kingsway College an email stating that the reference to Nursing must be removed from their website and advertising materials.

### Response

Despite numerous attempts, the ARB was unable to secure a response from the Advertiser.

### 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 Advertiser has not responded in this matter and the ARB will therefore assume that it does not consider itself bound by the ARB and the Code of Advertising Practice.

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 states 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 Advertiser has chosen not to respond to the complaint. This places the Directorate in a position that it is forced to accept the Complainant's submissions.

It appears from the evidence submitted by the Complainant that while HWSETA does accredit some of the Advertiser's courses, none of those courses are nursing courses.

The extract of the advertising that the Complainant submitted appears as the header on a webpage headed "Nursing courses" and advertising various courses (<http://kingswaycollege.co.za/nursing-courses.html>) including the Ancillary Health Care course that the Complainant registered for.

It is unclear to the Directorate, in the absence of a submission from the Advertiser, whether the situation is that the course in question is accredited by HWSETA but is not a nursing course; or whether the course is a nursing course but is not accredited by HWSETA. Given the content of the courses and the submissions, the Directorate suspects the former – that these are HWSETA accredited courses but none of them will qualify you as a "nurse" *per se*.

The Directorate notes that there is nothing in the course description itself that is misleading. All the courses described under the heading in question set out exactly what is involved and what the consumer will be qualified to do if they complete the course.

None of the course outlines creates the impression that you will be formally qualified as a “nurse” on completion of same. The Directorate is also of the opinion that a consumer who has carefully researched nursing qualifications will be well aware of this.

However, the Directorate also had regard to the target market for these courses – consumers who have ABET qualifications. They are therefore not necessarily matriculants or highly educated individuals. In this context, it must also be accepted that the word “nursing” has a very specific connotations with a qualified “nurse”. The hypothetical consumer in the target market may therefore expect that the “nursing” qualifications would either qualify them to nurse, or at least set them on the path to such a qualification. This does not appear to be the case from what is before the Directorate. The Directorate also considered that “Nursing” is not the only word that could be applied to these courses. A label such as “Health Care Courses” would be equally descriptive of what is on offer, without creating the connotation to “nursing”.

**In the circumstances, the Directorate finds that the heading “Nursing courses” followed by the description of the HWSETA accreditation may create the impression that the courses are HWSETA accredited formal Nursing Courses, which it appears *ex facie* they are not. Given this, the claim is misleading and in breach of Clause 4.2.1 of Section II.**

## Sanction

Members of the ARB are advised not to accept advertising from the Advertiser stating “Nursing courses” as used in the context described above.