

## Decision of the ADVERTISING REGULATORY BOARD

Complainant	Ms. Bonita Ngwenya
Advertiser	Comair Limited
Consumer/Competitor	Consumer complaint
File reference	Kulula.Com - Bonita Ngwenya - 23-11-18
Outcome	Dismissed
Date	17 January 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Ms Ngwenya against the television commercial of Kulula.com.

### Description of the advertising

A white couple is shown waiting outside their house with their luggage bags, when their black neighbour drives by to greet them.

Neighbour: “So today is the big day hey?”

Husband: “Thanks for looking after the house and feeding Sniffles again!”

Neighbour: “Argh, don’t worry about it.”

Husband: “It’s a quick getaway, some sun, sea, jet skis...”

Neighbour: “Ja, you kids have fun hey.”

Wife: “Thank you.”

The neighbour then intentionally drives over the couple’s luggage three times, damaging the bags and dirtying the clothes. He then waves goodbye as he hits the horn of his bakkie.

The voice-over then says, “Don’t be a travel hater, book affordable holidays, flights, hotels and car rentals. Kulula.com.”

## Complaint

The complainant saw the commercial on twitter and on YouTube (<https://www.youtube.com/watch?v=TEa4UNdD-pk>). Her objection is that the advertisement incites divisions among racial lines and the travel hater campaign is nothing more than an unjust portrayal of any working class citizen that plans holidays with honest money. The Complainant alleges that the commercial has racist undertones. She also took issue with the behaviour of destroying someone’s personal property as criminal and the aggression is unacceptable for sensitive viewers. The complainant requested that the advert should carry an age restriction and a warning for violence.

## Response

In response, Comair submitted that it is not a member of the Advertising Regulatory Board (ARB) and it also does not agree to submit to the jurisdiction of the ARB. The Respondent denied all the Complainant’s allegations, arguing that it has always been a

fun brand that does amusing advertising that gets people talking. It submitted that the advertisement is humorous and that it does not breach any advertising standard or social convention with respect to the promotion of violence. It therefore denied the assertion made by the Complainant that the advertisement needs to carry a “warning for violence”.

It also submitted that the depiction of a person driving over items of luggage links back to the central theme of the advert and the campaign (i.e. “Don’t be a Travel Hater”) in a humorous way, as the advertisement depicts a jealous reaction to a couple going off for a holiday. It explained that the advertisement taps into the natural tendency of humans to become jealous when they hear of another person getting the chance to do something that they themselves would like to do. It therefore denied the allegation that the advertisement promotes racial hostility or fosters racial division. The fact that the “travellers” are white and the “travel hater” is black is completely incidental and has no relevance whatsoever to the storyline or message of the advertisement. It also submitted that Comair Limited and its brand Kulula.com are firmly committed to a diverse, non-racist and non-violent South Africa.

The Respondent argued that the advertisement does not in any way contravene Clause 1 of Section II (Offensive advertising), Clause 3.2 of Section II (Violence) and Clause 14 of Section II (Children) for the reasons outlined above. However, it did indicate that the advertisement in question will be removed on 19 December 2018, and will no longer be used as the campaign period has come to an end. It may be used again in future.

### Application of the Code of Advertising Practice

The following clauses were considered in this matter:

- Offensive advertising - Clause 1 of Section II
- Violence - Clause 3.2 of Section II ; and

- Children - Clause 14 of Section II.

## Decision

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

### Jurisdiction

The Advertiser has advised that it is not a member of the ARB and does not consider itself bound by the decisions of the ARB.

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 nonmember 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 our members.

This ruling will be binding only on ARB members and on broadcasters in terms of the Electronic Communications Act.

### Potential undertaking

The principle sanction of the ARB is to have advertising that breaches the Code removed from publication. Therefore, if an advertiser undertakes to withdraw an advertisement and not use it again in the future, that undertaking is accepted without considering the merits of the matter. The Advertiser has removed the advertisement in question.

However, the Advertiser's undertaking is not unequivocal, as it has submitted that there is a possibility of using the commercial again in the future.

**Given this, the Directorate cannot accept the undertaking, but will proceed to look into the merits of the matter.**

### Merits

This commercial is part of a campaign of advertisements based around the concept "Don't be a travel hater". All the executions in the campaign involve some act of sabotage being performed on a person who has just had or plans to have a holiday. The communication is that one need not be a travel hater, as flights with the Advertiser are so affordable.

It is against this backdrop that the Directorate must consider whether this commercial is offensive, incites violence or is harmful to children.

The Directorate considers that the campaign as a whole, and the specific execution in particular, are clearly over the top and humorous. The depicted action of running over somebody's luggage is not one that would realistically be engaged in by a sane person; and if it were, it would have serious consequences. The Directorate is of the view that the hypothetical reasonable viewer will understand the humour in the commercial and will not take it literally.

On the issue of racist undertones, the Directorate notes that while it is true that the travellers are white and the travel hater is black, this does not seem to have any relation to the act of running over the suitcases. The characters are, in fact, clearly friends who help each other out. They greet each other warmly, and it is clear that the black neighbour is looking after the travellers pet while they are away. The exchange is respectful and friendly, until the travellers start “bragging” about their travels. It is at this point that the travel hater gets a crazed look and destroys their luggage. It is patently clear that the trigger for his action is that he is jealous of their holiday, and irritated by their bragging – and not any racial issue.

Given this, the Directorate turns to the specific clauses.

### Violence

Clause 3.2 of Section II of the Code states “advertisements should not contain anything which might lead or lend support to acts of violence, nor should they appear to condone such acts.”

As stated above, the behaviour in the commercial is clearly exaggerated to be humorous, and the viewers would understand that the behaviour in the commercial is unacceptable and should not be emulated.

The Directorate is satisfied that viewers would not interpret the commercial in a literal manner and would not interpret it as promoting violence.

**Accordingly the commercial is not in contravention of Clause 3.2 of Section II of the Code.**

### Children

The Complainant submitted that the commercial should carry an age restriction and a warning for violence.

Clause 14 of Section II states, *inter alia*, that advertisements addressed to or likely to influence children should not contain any statement or visual presentation which might result in harming them, mentally, morally, physically or emotionally.

The commercial plot is over the top and humorous, and it has been held above that the commercial cannot be said to be condoning any violent behaviour. A child who can follow the plot of the commercial will also understand that the depiction is humorous and will not imitate the commercial – not least of all because a child is not legally allowed to drive and would therefore not be able to imitate the commercial even if they wanted to.

Given the above, the Directorate is satisfied that the commercial does not contain anything which might result in harming children mentally, morally physically or emotionally.

**It is therefore not in contravention of Clause 14 of Section II of the Code.**

### Offence

Clause 1 of Section II of the Code states “No advertising may offend against good taste or decency or be offensive to public or sectorial values and sensitivities, unless the advertising is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.”

As stated above, the Directorate is satisfied that the commercial is over-the-top and humorous, and that the hypothetical reasonable person would not take it literally. In addition, while allegations of racism are serious and will always be treated as such by the Directorate, the Directorate can find no reasonable basis for such an allegation in the current matter.

It is also noted that the commercial was flighted extensively, yet only one complaint was received. While this is not in itself decisive if the offence is serious, it is indicative that there is no widespread offence.

**The commercial is therefore not in contravention of Clause 1 of Section II of the Code.**