

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Monique Fourie
Advertiser	Mazda Southern Africa (Pty) Ltd
Consumer/Competitor	Consumer
File reference	Mazda CX-5 – Monique Fourie
Outcome	Dismissed
Date	24 July 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint by Monique Fourie against a brochure advertising the range of Mazda CX-5 vehicles.

Description of the advertising

The advertising states, *inter alia*:

“Get comfortable

“With crafted interiors that support and comfort, the New Mazda CX-5 can accommodate five adults luxuriously in select indulgent leather.”

Complaint

The Complainant submitted that the advertising is misleading because the seats are not completely leather. The seats have leather uppers and this should have been specified in the advertising. They were under the impression, when they bought the car, that the entire seat, back and front, was full leather. Now they are suffering damages as a result because the leather seats are coming apart after only two months of driving under 1400km. The Complainant attached images of the damaged leather seats, as well as the decision of the Motor Industry Ombudsman of South Africa in support of her complaint.

Response

The Advertiser submitted that to its knowledge, it is not a member of the Advertising Regulatory Board, and it therefore believes it does not fall under the jurisdiction of the ARB. It is, however, committed to good governance on all levels of its organization. The Advertiser submitted that its response should be viewed accordingly, and all its rights are reserved.

The Advertiser argued that the complaint refers to leather seats, which the Complainant believes are not full leather seats, but rather leather uppers only. It confirmed that the seats in question for the models mentioned by the complainant (Mazda CX-5 Dynamic 2.0I and Mazda CX-5 DE Akera 2.2I AWD Auto) are indeed full leather seats. The entire seat, back and front, is full leather.

Further to its consultation with its Product and After Sales department, it has discussed the matter with its parent company, Mazda Cooperation, in Japan. Mazda Cooperation has confirmed that the seats in question are leather seats, and has referred the Advertiser to the ordering guide for specifications of vehicles. The Advertiser provided the Directorate with extracts of the ordering guide. For the local specification, leather is the material available to the Advertiser (marked with an "X" as standard). Further, the external party consulted by the Complainant specifies the seats as leather. The concern is around the colour variation, rather than the seat being leather or any other material.

Application of the Code of Advertising Practice

The following clauses were considered in this matter:

- Substantiation - Clause 4.1 of Section II, and
- 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 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 the benefit of its members.

Merits

The Directorate starts by noting that the jurisdiction of the ARB is limited to the question of whether or not the advertising is misleading. While it appears from the photographs and the decision of the Motor Industry Ombudsman that the Complainant received a poor quality

product from the Advertiser, the issue before the Directorate is whether the claims relating to leather in the advertising are misleading.

The Advertiser provided the Directorate with its Mazda XC-5 Specification Guide. The Equipment List for the Mazda CX-5 shows that for the South African market, cloth seats are not available for the CX-5 Akeru and Dynamic models, and that leather seats are standard specification.

Given this, it appears unlikely that the Complainant would have received a freak model that only had leather uppers. This alone, however, is not enough.

In an effort to verify the quality or the type of the leather used in the vehicle, the Complainant approached Custrim Custom Interiors, a company specialising in vehicle upholstery, to assess the vehicle's upholstery. The assessment report contains the following findings:

- In respect of the driver's seat, the assessor indicated that the *"front seat cushion panel is torn and discolouring visible"*, and *"I could see that the flesh side seemed to not have flesh seal done properly or at all. The flesh hairs were showing through the perforate insert. The colour penetration is [not in order]. The leather is not dyed through."* As for the front seat backrest side bolster, the assessor noted that *"the leather colouring is coming off. The colour penetration is [not in order]"*;
- In respect of the passenger seat, the assessor noted *"small areas of concern picked up with regards to the leather panels"*, and that the *"colour penetration is [not in order]"*;
- In respect of the rear seats, the assessor said: *"I could see spots of colour variation / distortion"*.

The overall take-out from the expert report is therefore that the seats are leather, albeit poorly manufactured and dyed.

Given this, the Directorate must conclude that the seats are leather, as advertised.

In the circumstances, the Directorate finds that the advertising does not contravene Clause 4.1 or 4.2.1 of Section II of the Code of Advertising Practice.