

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Dr Chris Pitzer
Advertiser	Wantitall (Pty) Ltd
Consumer/Competitor	Consumer
File reference	372 -Wantitall – Dr Chris Pitzer
Outcome	Dismissed
Date	27 September 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Dr Pitzer against website advertising on Wantitall.co.za.

Description of the advertising

The website offers Dr Pitzer's book, Kruie – Van Toeka tot Nou, for sale for R1540.

Complaint

The Complainant submitted that he has never given permission for his book to be sold, and that the site claims that the book will be imported from the US which it is not. He suspects this may be a scam.

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

The Complainant is disturbed to see his book on sale on www.wantitall.co.za for two reasons:

- He did not give permission for this;
- The book is not imported from the USA.

Despite having no response from the Advertiser, the Directorate cannot ignore what it knows about the Advertiser's business, and about the nature of book sales.

The Advertiser's business is a South African based website that sells products that are available in America. Sometimes the products are also available in South Africa – usually for much less, because the Advertiser adds an import charge. That is the case in this matter. A copy of the Complainant's book has obviously made its way to America, and is being resold. This particular copy will, indeed, be imported from America.

Which then leads to the issue that the Complainant did not give permission for his book to be marketed on this channel. The book market is broadly split into two channels that are relevant for the purposes of this discussion: new and used. While the publisher of the book may have some control over the initial sale of the book, they have no control

over the resale. Just as you are entitled to sell your second hand car on a motor dealing website, so too you are allowed to sell your second hand book on a website.

Given this understanding, there is nothing before the Directorate to indicate that the advertised book is not indeed available as advertised. **The advertising is therefore not misleading nor in breach of Clause 4.2.1 of Section II.**