

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Harrie Esterhuysen
Advertiser	Col'Cacchio Holdings (Pty) Ltd
Consumer/Competitor	Consumer
File reference	Col'Cacchio – Harrie Esterhuysen
Outcome	Upheld
Date	26 June 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Mr Esterhuysen against the website advertising for Col'Cacchio's Twosday special.

Description of the advertising

The special in question is advertised as follows:



Two for one at I LOVE TWOSDAY

Your favourite promotion is back! Yes, our I Love Twosday two-for-one deal is here again – this time for a full four months!

The deal works in twos: For every two pizza or pasta combinations ordered you will get the cheapest one free. Order two and pay for one, simple as that.

All the pizzas and pastas on the menu are part of the deal but here are some of the absolute showstoppers that will have you coming back for more:

Norm's Praline

A divine butternut and tomato base, this pizza is topped with roasted butternut, chilli feta, pumpkin seed

Morituri

One of the bestsellers, this pizza is packed with chicken, bacon, avo, feta and roasted red pepper.



Below this one finds:



This homemade delight will have you rethink everything you know about both spinach and gnocchi. Made with pomodoro sauce, Peppadew piquante and chilli flakes, it's absolutely moreish.

A pasta like no other, with succulent, slow-cooked pulled beef short rib in red wine sauce served with your choice of pasta and Italian parmesan.

The I Love Twosday special is available all day, every Tuesday, from Tuesday, 7 May to Tuesday, 27 August 2019. Please note that it is only available for in-store, sit-down meals. A comprehensive list of terms and conditions can be [viewed here](#).

Make sure to follow us on [Facebook](#), [Instagram](#) and [Twitter](#) for regular updates.

Tag us on social media:
#ILoveTwosday
#colcacchio
#EverySliceTellsAStory

... and if you can't get down to one of our restaurants to enjoy these tasty pizza creations, you can also order through our delivery partners Mr D and UberEATS who will deliver them straight to your couch or desk!

Complaint

In essence, the Complainant submits that the material leads the consumer to assume that if they order two dishes they will only pay for one. However, what the advertisement fails to make clear is that you may only order one meal per person (one person cannot order two pizzas or pasta dishes) as set out in a long list of terms and conditions. This means the deal is not available for individuals visiting the restaurant. And, for example if you are three people, you are only allowed to order three pizzas/pasta dishes, not the advertised, "Order

two and pay for one, simple as that". Three people would only qualify for one free pizza or pasta dish.

Response

The Advertiser responded and submitted in essence that the special refers to the terms and conditions. These include the provision that "One promo per couple/two people."

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.

The question before the Directorate in this matter is whether the advertising would lead the hypothetical reasonable consumer to expect that an individual could order two dishes, and get one free; or that a group of 3 people could order 4 dishes and get two free.

The Advertiser has submitted that the terms and conditions make it clear that this is not the case.

The Directorate starts by noting that one cannot, in the terms and conditions, correct a misleading impression already created in the advertising – the terms and conditions serve to clarify the offer, not change it.

Looking at the initial offer, the Directorate notes that it states:

"The deal works in twos. For every pizza or pasta combinations ordered you will get the cheapest one free. Order two and pay for one, simple as that."

There are a number of issues here:

- The statement says “you” will get – not “a couple” will get. This implies that an individual ordering two will get the cheaper one free;
- There is no asterisk in the statement to alert consumers to a material condition;
- The statement then emphasises “Order two and pay for one, simple as that”. The implication is strongly that this is NOT a complicated offer, subject to material terms, but a simple offer that if you order two things, you get one free.

The advertising does go on to highlight one of the material terms – that the offer is only available in store. It does not, however, go on to highlight the material term that this is only available to couples, or groupings of couples.

Finally, the Directorate looks at the condition itself, which states: “One promo per couple/two people”. This could be understood to mean that the special is not available to individuals or uneven groups who want to eat more, as is apparently the intention. However, it could also be understood to mean that you cannot cash in the special twice per meal – so one couple or individual cannot order four meals and only pay for two. Therefore, even if the consumer *had* read the term, it does not unambiguously clarify the situation.

The Directorate also applied its mind to whether it would be completely unreasonable for an individual to expect the offer to apply to them. The Directorate allowed that the individual might understand that they cannot order two and take one away. This would firstly be in breach of the eat-in condition that is highlighted, and would arguably be a deliberate abuse of the special. However, the Directorate considered the situation where a person might order a small pizza to start, and then a pasta as a main. Given the wording of the offer, the Directorate is of the opinion that this person would quite reasonably expect to only pay for the more expensive dish.

Given the above, the Directorate is of the opinion that the special is misleading and in breach of Clause 4.2.1 of Section II.

Sanctions

In light of the decision, the Advertiser is instructed to withdraw or amend the advertised offer in line with the decision.

The Advertiser must:

- Withdraw or amend the material in terms of the deadlines set out in Clause 15.3 of the Procedural Guide, which for the internet is two weeks or as determined otherwise. The Directorate notes in this regard that the Code is somewhat outdated in terms of internet time frames, and that a withdrawal is possible in a much shorter time frame. The Directorate therefore affords the Advertiser one week in this regard.
- The process to withdraw or amend the material must be actioned immediately on receipt of this decision.