

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Reush Ramdath
Advertiser	Dis-Chem
Consumer/Competitor	Consumer
File reference	581 – Dis-Chem – Reush Ramdath
Outcome	Upheld
Date	11 December 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Reush Ramdath against online advertising for Dis-Chem.

Description of the advertising

The advertisement included the following image:

ive Ladies EDT 100ml Plus Guess 1981 Sample In A Tote Bag

Guess
Guess Seductive Ladies EDT 100ml Plus Guess 1981 Sample In A Tote Bag

Price: **R 525.00**
 Credit: from R49 per month ⓘ

Benefit Points: 52500
 eB: 5 250
 Discovery Miles: 5 250

Out of stock online. Get notified?

Add to list Check in-store availability

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K24
M3

Complaint

In essence, the Complainant submits that while the special was available in-store, it only came with a 50ml bottle and not a 100ml bottle, as advertised.

Response

Despite attempts, the ARB was unable to get 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, 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 issue in this matter is that while the special was advertised online with a 100ml bottle of perfume, it was only available in-store with a 50ml bottle. The question is whether this renders the online advertising misleading.

On one hand, the Directorate accepts that online specials may differ from in-store specials; and that frequently online specials are not actually available in-store at all. There is also no evidence before the Directorate to show that the advertised online special was in fact not available at all (although it was no longer available at the time the screen shot was taken).

On the other hand, the special that was available in-store seems to be part of the same promotion. Given that the special does seem to be available in-store, it becomes confusing that the offer differs. The Directorate is left floundering for an explanation for the difference, given the Advertiser's failure to respond.

On looking at the online advertisement for further clarity of what the reasonable consumer should have expected, the Directorate notes that the website states "Out of stock online" and "Check in-store availability". These two statements, read together, imply that while this special is not available online anymore, the same special may be available in-store. In the circumstances, the Complainant was reasonable in expecting that the very similar in-store offer would conform to the advertising of the online offer, which it did not.

Given the above, and in the absence of any explanation, the Directorate concludes that the advertising is in breach of Clause 4.2.1 of Section II.

The special seems, in any event, to have run its course, and no sanction is therefore necessary.