

## Decision of the ADVERTISING REGULATORY BOARD

Complainant	Conrad Schutte
Advertiser	Fresh Start Law Centre
Consumer/Competitor	Consumer
File reference	472 – Fresh Start Law Centre - Schutte
Outcome	Upheld
Date	28 October 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Conrad Schutte against website advertising for Fresh Start Law Centre.

### Description of the advertising

The claims relate to the promise of speedy criminal record expungement:

## How long does it take?

"We remove criminal records faster than any other company in South Africa".

### To obtain an Initial Clearance Certificate:

Fresh Start Law Centre: 5-10 days (that's 2 months faster)

The competition: 30-60 days

### Application to remove your Criminal Record:

Fresh Start Law Centre: 12 weeks or less (that's 1-3 months faster)

The competition: 18-26 weeks

That means we'll have your criminal record removed almost half a year sooner and saving you thousands in legal fees.

You are truly receiving *the* fastest service at the lowest price. [Guaranteed.](#)

We utilize highly sophisticated systems to constantly track and monitor your application progress 24/7/365. You are immediately notified by your Dedicated Account Manager regarding the process and movement of your application at each and every stage. Furthermore, you will receive weekly email and SMS progress report notifications (opt-out available) and access to the member portal to view a real-time progress report.

Which other company can show you a snap shot of all their combined criminal record removal applications and progress?

## Complaint

The Complainant points out that the website makes statements such as the fastest company to obtaining your expungement of criminal record. They beat all competitors. The Complainant chose the Urgent Priority service and paid. Once paid, he submits that you get a customer portal on the website to follow your case progress. He expected his documents to be issued in about 10-12 weeks (Urgent Priority Service) At the time of complaint, it had been 17 weeks. When he requested a refund for the difference between the Urgent Priority service and the Standard service, he was ignored. He subsequently saw that the terms do state that there may be delays, but that these terms are only available on the customer portal, after you pay.

## Response

Despite 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:

Honesty – Clause 2 of Section II

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 question before the Directorate is essentially two-fold:

- Was it reasonable for the consumer to expect his criminal record to be expunged?
- Was it reasonable for him to expect it to happen in the advertised time?

While the Directorate has not received a response from the Advertiser, it still considers this matter in as much detail as it can. In the absence of a response, this involves considering the complaint, the actual website, and the surrounding circumstances.

The Directorate notes the following:

- The website states that it has a “99,95%” success rate with criminal records. This immediately alerts a consumer to the fact that there may be exceptions;
- This is also a matter of common sense. There will be situations where it is impossible to expunge a criminal record. Many factors will be at play, such as when the crime occurred, what type of crime it was and what sentence was imposed. A traffic fine ten years ago and a murder a year ago are going to be two very different issues. However, the website provides insight into who qualifies.;
- In this section, it also says, “If expungement is granted” (our emphasis); indicating that this is not guaranteed.
- This having been said, there is nothing before the Directorate to suggest that the Complainant fell outside the category of people who qualify;
- The advertisement also offers “100% money back guarantee”. It would therefore be presumed that if a customer fell into a category where the expungement was impossible, or would take longer than advertised, they would get some sort of refund. In the FAQs, it says, “We've cleared over 5,000 criminal records with a 99.95% success rate. Combined with our 100% money back guarantee and 105% lowest price guarantee, there really is no risk to you.” This reiterates the idea that you can reasonably either expect to get the expungement or your money back. The Complainant has *ex facie* received neither.

The Directorate suspects that some issue has occurred in this matter, and that the failure to refund is essentially a service issue. One experience of bad service will not always nullify an advertising claim. However, as the Advertiser has chosen not to respond to the complaint, this is an assumption. The facts before the matter are that:

- The criminal record has not been expunged;
- The advertised deadlines were not met;

- No refund was forthcoming.

Given the lack of response, the Directorate is put in a position that there is no option but to find that the advertised claims were misleading. At the very least, one would have expected the Complainant to be refunded for the extra that he paid for “urgent” service.

**In the circumstances, the Directorate has no choice but to find that the claims are in breach of Clause 2 of Section II and Clause 4.2.1 of Section II.**

### Sanction

Members of the ARB are advised not to accept advertising for Fresh Start Law School making unqualified claims regarding the urgent expungement of criminal records, together with a money back guarantee, in any medium.