

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Mr Willem Heckroodt
Advertiser	Leadhome (Pty) Ltd
Consumer/Competitor	Consumer
File reference	Leadhome – Willem Heckroodt
Outcome	Upheld
Date	15 March 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Mr Heckroodt against the Leadhome’s online advertising.

Description of the advertising

The claim in question is found at

https://www.leadhome.co.za/?utm_source=search&utm_content=427

It states, “Our fee is just R 39,995 + VAT”.

Complaint

In essence, the Complainant submits that it is in contravention of s65 of the VAT Act to advertise prices exclusive of VAT.

Response

The Advertiser advised that they are “not bound by this and only SARS can rule on this”.

Application of the Code of Advertising Practice

The following clauses were considered in this matter:

Pricing policy (VAT) – Clause 19.4 of Section II

Decision

Having considered all the material before it, the Directorate of the ARB issues the following finding.

Jurisdiction

It is not clear whether the Advertiser is asserting that it is not bound by the ARB, or by the provisions of the VAT Act. 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

In essence, the Complainant has submitted that the Advertiser is in breach of s65 of the VAT Act.

It is correct that in most circumstances, the ARB is not the correct forum in which to allege a breach of law. However, in the case of the VAT Act, the marketing and advertising industry have chosen to specifically include Clause 19.4 of Section II which states, “Attention is drawn to the provisions of Sections 64 and 65 of the Value-Added Tax Act 89 of 1991”. This situation is therefore specifically brought under the mandate of the ARB.

Section 65 of the VAT Act states, *inter alia*:

Any price advertised or quoted by any vendor in respect of any taxable supply of goods or services shall include tax and the vendor shall in his advertisement or quotation state that the price includes tax, unless the total amount of the tax chargeable under section 7 (1) (a), the price excluding tax and the price inclusive of tax for the supply are advertised or quoted by the vendor

This allows only two options:

- The price must be advertised inclusive of VAT. ie R XXXX (incl VAT); or
- The price must be shown with and without VAT. ie RXXXX + RYYY (VAT) = RXYXY

In the material before the Directorate, the price is only advertised exclusive of VAT. The correct format would have been:

- R 45 994,25 (incl VAT); OR
- R 39 995 (excl VAT) plus R 5999,25 (VAT) = R 45 994,25 (incl VAT)

There are no other options in terms of s65 of the VAT Act.

The advertising is therefore *ex facie* and in the opinion of the Directorate in breach of the VAT Act and therefore is in breach of Clause 19.4 of Section II.

Sanction

Members of the ARB are advised not to accept advertising for Leadhome that carries only the VAT Exclusive price.