

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Erica Hoogervorst
Advertiser	Mambo's Plastics Warehouse (Pty) Ltd
Consumer/Competitor	Consumer
File reference	Mambo's Storage & Home – Erica Hoogervorst-14-11-18
Outcome	Dismissed
Date	4 December 2018

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Erica Hoogervorst against the Advertiser's online sale pamphlet, advertising a 110L Mcgyver Storage Box.

Description of the advertising

The sale pamphlet shows different storage products and states, *inter alia*, "You want it? We got it!!! **QUALITY AT THE BEST PRICES.**

Below it states "110L McGYVER Storage Box R99".

Complaint

The Complainant submitted that she arrived at the Cape Gate Store to purchase this item, only to be informed that they were out of stock. The Complainant submitted that she wanted to buy only two items, but the manager pointed out a line at the bottom of the page says “We reserve the right to limit quantities. VALID UNTIL 25 November. While stock lasts.”

Instead of being supplied with something similar, she was told to come back when there is stock again. The Complainant argued that the Advertiser should not advertise something it did not have in stock.

Response

The Advertiser denied the Complainant’s claims that its advertisement is misleading and that it had a non-availability of products advertised.

It submitted that it promotes products for a period of 2 – 3 weeks and it states in all its advertisement that the promotion is valid from a certain date to a certain date. In this case the promotion was valid until the 25 November 2018. The limit in quantities was never an issue.

It submitted that it states at the bottom of the advertisement “while stocks last”. The Advertiser added that the item in question was sold slightly below cost and it had a tremendous response due to its price point. It argued further that it managed to supply

the Cape Gate store alone with 979 units of this item, during the period 24 October until 13 November 2018 (the day before the customer walked into the store).

Application of the Code of Advertising Practice

The following clauses were considered in this matter:

Misleading advertising - Clause 4.2.1 of Section II

Non-availability of advertised products - Clause 31 of Section III

Decision

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

Clause 4.2.1 of Section II states “advertisement should not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer.”

Clause 31 of Section III provides that “advertisements should not be submitted for publication unless the advertiser has reasonable grounds for believing that it can supply any demand likely to be created by the advertising.” It further provides that “in particular, no attempt should be made to use the advertising of unavailable or non-existent products as a means of assessing likely public demand.”

The Complainant argued, in essence, that the Advertiser should not advertise something it did not have in stock. The Advertiser submitted that it cannot predict the sales of any

item. It managed to supply the store with 979 units of this item during the period 24 October until 13 November 2018.

From the Advertiser's submission it is clear that the promotion started around 24 October and ran until 25 November 2018. The Complainant went to the store on 14 November 2018 - 21 days after the promotion started. The advertisement has a clearly legible disclaimer that states "We reserve the right to limit quantities. VALID UNTIL 25 NOVEMBER 2018. While stock lasts." (our emphasis).

It would therefore appear that the store honoured the offer and sold 979 units in terms of this offer, and therefore had a reasonable amount of available stock. The hypothetical reasonable consumer would expect that towards the end of a sales period, certain items may have sold out. In addition, the disclaimer makes it clear that this is a possibility.

Given the above, the Directorate of the ARB is of the opinion that the advertisement is not misleading or in contravention of Clause 4.2.1 of Section II or Clause 31 of Section III as contemplated by the Complainant.