

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Torga Optical (Pty) Ltd
Advertiser	Spec-Savers South Africa (Pty) Ltd
Consumer/Competitor	Competitor
File reference	Spec-Savers - Torga Optical
Outcome	Dismissed
Date	9 September 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Torga Optical (Pty) Ltd against a claim made in television/YouTube and radio advertising by Spec-Savers South Africa (Pty) Ltd.

Description of the advertising

The claim below appears in both radio and social media (YouTube)/television advertising:

“Just another reason why we are SA’s most popular optometrists.”

Complaint

The complainant submits that the claim is capable of objective substantiation. Because it contains the word “popular”, the claim is not a mere opinion and is rather a statement of fact.

The complainant also mentioned a similar complaint that it lodged against the advertiser in 2017 and alleges that the advertiser has acted and continues to act in flagrant disregard of the Code of Advertising Practice.

Response

The advertiser responded to the complaint by stating that the words *“Just another reason why we are SA’s most popular optometrists”* would be removed from the radio advertisements.

The Directorate queried whether this undertaking would apply to all forms of media and the advertiser responded that the YouTube and television commercials are not in contravention of the Code. It further advised the Directorate that the exact same complaint was lodged by the complainant against the advertiser in 2017. The advertiser states that in that ruling the ASA, as it then was, concluded that the written qualification **“*Ask Afrika Star Brands, Beeld Readers’ Choice Awards and Ask Afrika Icon Brands for 5 consecutive years”** was sufficient justification for use of the wording and the claim was not in contravention of the Code.

The advertiser mentions that the current advertising contains the same written explanatory wording and that it remains true that the abovementioned awards have been won by the advertiser for the past five years and provided evidence to this effect.

Application of the Code of Advertising Practice

The following clauses were considered in this matter:

Substantiation – Clause 4.1 of Section II.

Decision

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

The undertaking

The Advertiser provided an undertaking, but only in relation to the radio advertising. The Directorate notes that the radio commercial in question differs from the

television/YouTube commercial in that it does not contain the disclaimer that appears in the latter advertisement. Accordingly, a consumer's understanding of the disputed claim as it appears in the radio commercial could arguably be different from the claim as it appears in the other advertisements.

The Directorate is therefore satisfied that the Advertiser's undertaking addresses the complainant's concern as it relates to the radio commercial, and therefore accepts this undertaking as a resolution to this part of the dispute.

The Directorate will now consider the merits of the complaint as it relates to the claim in the television/YouTube commercial.

Merits

By way of background, the 2017 ruling referred to was Spec Savers / Torga Optical / 2017-6147F decided on 21 July 2017. In this ruling, the complainant took issue with the claim "South Africa's most popular optometrists", as is the case here. The words appeared on-screen in a television commercial. The advertiser undertook to make specific reference to certain awards in its advertising and provided a screenshot of the amended commercial, which read "South Africa's most **popular optometrists***" with a disclaimer reading "Ask Afrika Star Brands, Beeld readers' choice award (platinum) and Ask Afrika Icon Brands for 5 consecutive years." In essence, the Directorate of the then ASA concluded that "Given that the respondent appears to be the *bona fide* winner of the relevant awards and accolades, and given that it has offered to include additional clarity in the form of disclaimers, the ASA is satisfied that this undertaking addresses the complainant's concerns." The undertaking was therefore accepted on condition that it be implemented in all and any media carrying the disputed claim.

The current television commercial contains the aforementioned disclaimer and the advertiser is therefore not in breach of the earlier ruling.

The Directorate notes, however, that while the disclaimer is fairly legible in the YouTube version of the television commercial when one watches it on a computer screen, it is questionable whether a consumer watching the advertisement on television would be able to read the disclaimer without being able to pause the commercial. It would therefore be preferable if the Advertiser increased the size of the disclaimer in the television

commercial, so that consumers can clearly see that the Advertiser's claim of being "SA's most popular optometrists" is based on the relevant awards.

Turning then to the merits of the current complaint, the complainant calls for substantiation of the claim that the advertiser is South Africa's "most popular" optometrist. The Directorate agrees that the claim is one that is capable of substantiation.

Clause 4.1 of Section II requires that advertisers should hold documentary evidence to support claims that are capable of objective substantiation. Such substantiation must emanate from or be evaluated by a person or entity which is independent, credible and an expert in the relevant field. Clause 4.1.2 of Section II further states that such documentation must be "up to date and current".

The Directorate was concerned that the evidence provided by the advertiser in 2017 was no longer up to date and current and therefore afforded the advertiser the opportunity to properly substantiate the claim, by providing up to date and market relevant documentary evidence.

The word "popular" suggests that the brand is the most loved by consumers and is not a scientific or technical claim that would require substantiation by an expert. In this instance, evidence regarding what consumers think of the brand is sufficient to substantiate the claim. While the claim is substantiable, the consumer is also going to understand that there is an element of subjectivity: there must be some basis that the brand is the most popular; but this does not mean that it will be *every* consumer's choice.

The advertiser provided correspondence from both Beeld and Ask Afrika. The Directorate is satisfied that these are independent and credible parties. The Beeld Readers' Choice award was won by the advertiser for five consecutive years and the Directorate is satisfied with this as substantiation that reflects the views of consumers regarding popularity of the advertiser's brand for the past five years, including 2019.

The Ask Afrika Icon Brands survey named the advertiser the winner of the award for seven consecutive years from 2013 to 2019. The Ask Afrika Kasi Star Brands award started in 2014, and the Advertiser won this award for five consecutive years from 2014 to 2018. When questioned, it transpired that the 2019 award/survey did not have a sufficiently

large sample size to comply with Ask Afrika's survey requirements. The fact is, however, that in the five years when the award was there to be won, the Advertiser won it.

In light of the above, the claim *"Just another reason why we are SA's most popular optometrists"*, as qualified by the disclaimer, *"*Ask Afrika Star Brands, Beeld Readers' Choice Awards (Platinum) and Ask Afrika Icon Brands for 5 consecutive years"*, has been substantiated. Accordingly, the claim – as it is used in the television/YouTube commercial – does not contravene Clause 4.1 of Section II.