

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Thando Dube
Advertiser	Taxify South Africa (Pty) Ltd
Consumer/Competitor	Consumer
File reference	Taxify – Thando Dube – 07-01-19
Outcome	Uphold
Date	19 February 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Thando Dube against the Facebook advertising of Taxify South Africa.

Description of the advertising

The advertisement claims:

“Earn R8000/week driving with taxify”.

Complaint

The Complainant submitted, in essence, that he has worked as a Taxify driver for a number of months and it is impossible to earn R8000. The advertising is therefore misleading.

Response

The Advertiser submitted that it is not a member of the ARB and that therefore there is no legal obligation for it to reply.

However, in an effort to show its *bona fides*, on a without prejudice basis, it confirmed that it was never its intention to mislead anybody with its advertisement. It is true that some drivers who avail themselves of the Taxify app have earned more than a gross income of R8,000.00 per week in the past. As Taxify does not pay for petrol and other expenses it cannot comment on what the driver's nett income is after he has received his payment from Taxify South Africa (Pty) Ltd.

Taxify South Africa (Pty) Ltd will amend its advertisement to read that a driver can earn around R8 000,00 per week.

Application of the Code of Advertising Practice

The following clauses were considered in this matter:

Substantiation – Clause 4.1 of Section II

Misleading claims – Clause 4.2.1 of Section II

Work-from-home schemes – Clause 11.4 of Section III

Decision

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

Jurisdiction

The advertiser advised that it is not legally obliged to submit to the jurisdiction of the ARB.

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

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

Clause 4.1 of Section II calls on advertisers to hold documentary evidence in support of claims that are capable of objective substantiation.

The Directorate noted that Advertiser’s undertaking to change the wording of the advertising from “earn R8000/week” to “earn around R8000/week”.

The Directorate felt that this was substantially the same claim as the original claim, and therefore gave the Advertiser an additional opportunity to respond, and asked for substantiation of the amount claimed. The Advertiser declined to comment further. The Directorate therefore has no choice but to rule on what it is before it.

The claim in question implies that a Taxify driver, working a reasonable amount of hours, would earn about R8000 a week. In support of a claim such as this, the ARB would expect to see either calculations as to how a Taxify driver's income is derived, or audited records of payments made to drivers, or similar support.

The Advertiser has put nothing before the Directorate. All that is before us is the allegation, from an actual driver, that this is not possible. In the circumstances, we have no choice but to accept that this allegation is true, as there is no evidence to the contrary.

The claim therefore appears to be misleading and in breach of Clauses 4.1 and 4.2.1 of Section II. There is no need for the Directorate to consider the remaining clause at this time.

Sanction

Members of the ARB are requested not to accept advertising from the Advertiser with the claim in question.