

Decision of the ADVERTISING REGULATORY BOARD

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| Complainant | EMS Foundation |
| Advertiser | The Elephant Sanctuary |
| Consumer/Competitor | Consumer / Interest Group |
| File reference | The Elephant Sanctuary – EMS Foundation |
| Outcome | Dismissed |
| Date | 30 August 2019 |

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint by EMS Foundation against The Elephant Sanctuary’s website advertising.

Description of the advertising

The website, which shows various images of elephants interacting with visitors, states:

*“THE **ELEPHANT**SANCTUARY WELCOMES YOU*

An elephant experience for life

*The Elephant Sanctuary - South Africa – has three African Elephant Sanctuaries across three provinces in Southern Africa. The Elephant Sanctuary started in 1999, grew from five elephants to a total of twelve African Elephants (*Loxodonta Africana*). These Elephants have been domesticated through positive reinforcement animal management principles, and as a result, provide us with the unique opportunity to interact with them.*

Visitors are taken on a journey into the world of the African elephant and are guided through an unforgettable experience with these magnificent creatures. Visitors are able to touch, feed and get to know these animals. The Elephant Sanctuary is unique in that it offers visitors the incredible opportunity to walk hand-in-trunk with the elephants. Enter the world of the Africa Elephant. Understand the height at which an elephant stands and experience their environment from an elephant's perspective.

The Elephant Sanctuary offers experiences/tours/programs daily. Each sanctuary has different time slots and these vary slightly. Details of what each sanctuary specifically offers, plus the rates can be found under each one. The close encounter with elephants you experience at The Elephant Sanctuary truly is one of a kind. When meeting them you will discover that each one has a different character, personality and temperament.”

Complaint

The Complainant submitted that the website advertises the business as being a sanctuary for elephants (on various premises around the country), when in fact the business is not a sanctuary in the ordinary sense of the word or in the sense in which the reasonable person would understand the word. The ordinary meaning of the word “sanctuary” in this context is a place of safety and refuge and/or a place where animals that cannot be rehabilitated into the wild are cared for.

The business being advertised is in fact founded on the exploitation of elephants for commercial gain. It is built on the model of allowing members of the public to pay for contact with the elephants. This is against international guidelines for animal sanctuaries and is detrimental to the welfare of the elephants. In order to make the animals “safe” for

contact with humans, they must be intensively trained. It is not possible to do this without cruelty and punishment. Even if they had indeed been trained using “positive reinforcement” as stated on the website, a facility where elephants are separated from other elephants with whom they have family bonds, kept in unnatural conditions and used primarily for purposes of display to humans, is not an elephant sanctuary.

Accordingly, the website name, statements on the website and the name of the business are inaccurate and mislead the ordinary reasonable consumer. In support of the complaint, the Complainant provided the Directorate with various definitions of the word “sanctuary” from different dictionaries and that of the Global Federation of Animal Sanctuaries accessed at <https://www.sanctuaryfederation.org>.

Response

Attorneys Spoor & Fisher, on behalf of the Advertiser, submitted that the Advertiser is not a member of the Advertising Regulatory Board (“ARB”), does not submit to the jurisdiction of the ARB and does not consider itself bound by any ruling issued by the ARB. Nevertheless, the Advertiser has been using the name The Elephant Sanctuary for 20 years. It is important to it that any misconceptions that may have been created through the complaint lodged by Complainant be removed, hence the response.

The Advertiser went into some detail as to why it disputes the Complainant’s interpretation of the word “sanctuary” and the Complainant’s view of what the public in South Africa understand the word “sanctuary” to mean in relation to animal rescue organisations. The response is not canvassed in its entirety herein.

The Advertiser agreed with the definitions given in the complaint from the Merriam Webster dictionary, the South African Pocket Oxford Dictionary and Google. The Advertiser agreed wholeheartedly that an animal “sanctuary” should be a place of refuge and protection for animals - a place where injured or unwanted animals are cared for. According to the definition of “Animal Sanctuary” on Wikipedia, an animal sanctuary is a

place where animals are brought to live and to be protected for the rest of their lives. One of the most important missions of sanctuaries, beyond caring for the animals, is educating the public.

The Advertiser does not agree with the Complainant's view that the public will not see an organisation as a sanctuary if the public are allowed access to the animals or if the rescue organisation is a commercial business. Provided animals are rescued and cared for, and are not abused in any way, the organisation would be seen by the public as a sanctuary. The Advertiser provided the Directorate with various printouts of website pages and links in support of this submission. The printouts show that the word "sanctuary" appears to be used by the public in relation to any organisation that has as its primary goal the rescue and protection of animals – regardless of whether or not interaction with animals is allowed and regardless of whether or not the organisation is non-profit.

The Complainant refers in the complaint to the Global Federation of Animal Sanctuaries, which can be found at www.sanctuaryfederation.org. There is a specific reference to tours which can be had at those sanctuaries. This implies that the Global Federation of Animal Sanctuaries does not discount the fact that tours can be had at organisations which qualify as sanctuaries.

In addition, it is also worth noting that in the draft document published by the Minister of Environmental Affairs in November 2018 for National Norms and Standards for the Management of Elephants in South Africa, the word "sanctuary" is defined as: "*A facility that provides permanent care to an elephant that would be unable to sustain itself if released in an environment other than a controlled environment, whether as a result of injury or on the account of human imprinting*".

The Advertiser started business 20 years ago – in 2000. It operates 3 elephant sanctuaries in 3 provinces – one in Plettenberg Bay, one in Hazyview, and one at Hartbeespoortdam. All of the elephants at the Advertiser's sanctuaries have been rescued from various locations. The elephants have been taken in, given names and are cared for as part of a

family. The elephants are kept in bonded groups and are not subjected to any cruelty or punishment whatsoever - the Advertiser is deeply opposed to any kind of animal abuse or punishment.

The Advertiser complies with all the norms and standards for the management of elephants in South Africa as required by law under the Bio-Diversity Act of 2004 and holds all valid permits for its operations. The Advertiser also complies with the current applicable norms as per the National Norms and Standards for the Management of Elephants in South Africa under GN 251 of 29 February 2008 and under the proposed new norms as published under GN 42015 on 2 November 2018.

The Advertiser's operations have annual state veterinarian inspections and are regularly inspected by state officials. The Advertiser also has an open-door policy with animal welfare organizations such as the NSPCA and The Animal Cruelty Society, which visit the Advertiser's sanctuaries regularly.

To conclude, the Advertiser denies that it is in contravention of Clause 4.2.1 of Section II of the ARB Code as the Advertiser does not believe that its use of the word sanctuary in its name is misleading to the public and therefore request that the complaint be dismissed.

Application of the Code of Advertising Practice

The following clause was considered in this matter:

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 submitted that it is not a member of the ARB and is not bound by its decisions.

The Memorandum of Incorporation of the Advertising Regulatory Board states:

“3.3 *The Company has no jurisdiction over any person or entity who is not a member of the ASA and that the ASA 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 the advertiser is not a member and does not submit to the jurisdiction of the ARB, the ARB will consider and rule on the advertising for the guidance of its ARB’s members. The ARB will, however, rule on whatever is before it when making a decision for 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 of the Code provides that “*Advertisements 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*”.

The Directorate starts by noting that it is not within its jurisdiction to make a decision about the ethics of the Advertiser’s business. The only question before the Directorate is

whether the consumer would be misled by the description “Elephant Sanctuary”.

From the material at hand, it is common cause that the word “sanctuary”, in the context of animals, refers to a place of safety and refuge and/or a place where animals that cannot be rehabilitated into the wild are cared for.

This was demonstrated in the definitions provided by the Complainant, e.g. Merriam Webster dictionary states that a sanctuary is “a place of refuge and protection”; the South African Pocket Oxford Dictionary (3rd Ed) states that a sanctuary is “a place of safety”, “nature reserve”, “a place where injured or unwanted animals are cared for”; the Google definition states that a sanctuary is a “refuge or safety from pursuit, persecution, or other danger”, “a nature reserve”. The Advertiser agreed with these definitions.

The Complainant relied on the accreditation requirements of the Sanctuary Federation to indicate that the Advertiser is misleading the public about the nature of its business. The Sanctuary Federation requirement provides that *‘accredited sanctuaries cannot buy, sell or trade animals, use them for commercial purposes, breed them, or allow the public to come into direct contact with wild or feral animals’*.

There is nothing before the Directorate suggesting that the Advertiser is an accredited member of the Sanctuary Federation or claims anything to that effect. This is therefore not an issue before the Directorate.

The Directorate agrees with the Advertiser that the South African public understands the word “sanctuary” in a broader term. For example:

(a) a Google search for ‘animal sanctuary’ results in: Bushbaby and Monkey Sanctuary in Hartbeespoort Dam, (<https://www.monkeysanctuary.co.za/>), which states: “Bush babies Monkey Sanctuary offer Monkey Tours for the family...”;

(b) a Google search for ‘South Africa Animal Sanctuaries’ results in: Ann Van Dyk Cheetah Centre (De Wildt Cheetah Sanctuary), which states: “*Take a safari or watch Cheetahs* run at full speed at the Ann Van Dyk (formerly De Wildt) Cheetah Breeding Centre and *Sanctuary*”.

These are just the two examples used in this Ruling. There are vast internet search results

indicating that the word ‘animal sanctuary’ is not viewed narrowly by the public. The Directorate agrees further with the Advertiser that the Sanctuary Federation website also provides for tours at www.sanctuaryfederation.org/find-a-sanctuary/.

In addition, the Directorate notes that the website which is the subject of this complaint is very clear about the nature of its offering. The first image on the landing page shows human interaction with the elephants, and consumers will therefore immediately be aware of the context of the use of the word “sanctuary”. This is further set out in detail in the copy of the page. In other words, the Advertiser does not hold itself out to be a “sanctuary” in the sense that the animals are kept in “natural” conditions.

It appears from the material before the Directorate that the elephants are indeed rescued animals, and that they are indeed kept safe from dangers. While the Directorate understands that it is debatable whether human contact is best practice in humane caring of elephants, it does not believe that the word “sanctuary” in this context misleads consumers.

In the circumstances, the Directorate finds that the advertising is not in contravention of Clause 4.2.1 of Section II of the Code of Advertising Practice.