

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Michael Robert
Advertiser	Discovery Bank Limited
Consumer/Competitor	Consumer
File references	Discovery Bank – Michael Robert
Outcome	Upheld
Date	9 December 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Michael Robert against Discovery Bank’s in-store sleeve advertising at iStores.

Description of the advertising

The advertising shows five iPhones 11 Pro and states:

“Get the new iPhone on us.

Upgrade to Discovery Bank.

Available exclusively from iStore.”

There is some writing at the bottom of the advertising which the Directorate could not read in the picture of the advertisement provided by the Complainant.

Complaint

The Complainant submitted that the advertising is misleading because it leads people to believe that if they move to Discovery Bank they can get an iPhone for free. However, the truth is that a consumer purchases the iPhone on the Discovery Bank credit card and Discovery will pay the consumer back if certain “goals” are met.

Response

The Advertiser submitted that it is not a member of the Advertising Regulatory Board and it is therefore not bound by the Code of Advertising Practice administered by the ARB or rulings issued thereunder. The Advertiser, as a good corporate citizen, decided to provide the following information to the Directorate:

- The claim “*Get the new iPhones on us. Upgrade to Discovery Bank*” appears under a depiction of an iPhone on the face of which all three Vitality Active Rewards goals (health, money and drive) have been achieved (i.e all three rings are closed);
- There is a disclaimer to the claim that “T’s and C’s apply”. A copy of the said T’s and C’s was submitted to the Directorate;
- The sleeve advertising in iStores is accompanied by flyers and other in-store advertising for Discovery that include the wording “*achieve all your Vitality Active Rewards goals to fully fund a new iPhone*”. The claim should not be seen in isolation of this statement. Examples of the statement as it appeared in collateral in iStores was submitted to the Directorate;
- The process by which a customer can get a fully funded iPhone is as follows:
 - The customer becomes a client of Discovery Bank. As per the T’s and C’s, the customer must have a qualifying Discovery Bank account with credit card. This account must be in good standing.
 - The customer downloads the latest Discovery app and activates Vitality Active

Rewards. Vitality Active Rewards is an in-app Vitality programme that rewards members for getting active, driving well and spending responsibly.

- The customer goes to the iPhone benefit on the Discovery Bank app to browse the phones that he/she may qualify for and to calculate the monthly cash back that could be earned.
 - The customer visits the iStore to activate the iPhone benefit and collects his/her chosen phone, paid for with a discovery credit card.
 - The customer achieves all his/her Vitality Active Rewards goals over a period of 24 months.
- Each statement cycle that the customer achieves all of his/her Vitality Active Rewards goals, he/she will receive a full cash-back. After 24 months the customer could receive cash backs up to the full price of the iPhone purchased;
 - The price of iPhone's available in terms of the benefit ranges, based on the product chosen and the client's affordability. Although customers might believe that a benefit of the value of the proverbial toaster might be free without any strings attached, in the Advertiser's view, no reasonable consumer would believe that cell phones of this value would be given away for free simply because he/she becomes a client of Discovery Bank. As stated in the advertisement, terms and conditions apply to this deal. This is also the position with the well-known Discovery iWatch benefit which has been running successfully for a number of years;
 - It is trite that advertisers cannot rely on one piece of advertising to correct any possible confusion created in another. In its view, however, the advertisement is not confusing at all – Discovery Bank will in fact effectively pay for a customer's iPhone, provided that there are terms and conditions that apply. It is irrelevant to the customer whether one of these terms and conditions is that the customer needs to pay for the iPhone with his/her credit card.
 - The Advertiser does not believe that a reasonable consumer would be misled by the Claim for purposes of Clause 4.2.1 of Section II of the Code and therefore the complaint should 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 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 of the ARB and does not submit to the jurisdiction of the ARB, the ARB will consider and rule on the advertising for the guidance of its 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 states: *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 Complainant argued that the advertising is misleading as consumers do not actually get the iPhones by upgrading to Discovery Bank; instead, consumers are compelled to purchase the iPhones using Discovery Bank credit cards and may receive cash back.

The Advertiser did not dispute the fact that indeed consumers have to use their Discovery Bank credit cards to purchase the iPhones once they have upgraded to Discovery Bank. The Advertiser argued that there are terms and conditions applicable in order to receive the iPhone benefit. The consumer has to achieve the Vitality Active Rewards goals in order to enjoy cash backs on statement cycles. These cash backs may result in Discovery paying the full price of the iPhone received by the consumer if the consumer achieves his/her active goals over a period of 24 months. The Advertiser argued further that the claim *“Get the new iPhone on us. Upgrade to Discovery Bank”* should not be read or be seen in isolation. It should be seen in context with other advertising materials in iStores that contain the following message: *“achieve all your Vitality Active Rewards goals to fully fund a new iPhone”*.

The Directorate notes that the Advertiser is aware that advertisers cannot rely on one piece of advertising to correct any possible confusion created in another advertising material. The claim, as it appears on the sleeve, communicates to consumers that they will get the iPhone once they upgrade to Discovery Bank. The words “on us” imply that the offer is similar to a “free” offer, and subject to no duty on the part of the consumer. The offer is “on us”; not “on achieving your goals”.

There is no qualification or limitation attached to the claim, and a reference to the “T’s and C’s” does not remedy the situation. The reality of the matter is that consumers actually purchase the iPhones on credit cards and hope to receive cash backs **if** they meet their active goals. The iPhone is not “on” the Advertiser, it is “on” the consumer’s credit card.

It is also unclear why the relevant qualification, which the Advertiser found easy enough to include on other advertisements, was not included on the sleeve, whether by a clear disclaimer, or a clear offer.

The Directorate also noted the Advertiser’s submission that this is similar to the Discovery watch offer, and consumers are aware of the types of conditions attached to these offers. The Directorate notes that there is nothing in the material to indicate the nature of this

offer, and consumers are not obliged to assume that a particular company only makes one type of offer. The Directorate notes particularly that this is a Discovery Bank offer, and not a Discovery Health offer. This makes it particularly unlikely that consumers would assume that the offer is linked to their health goals.

It is the Directorate's view that the claim is unqualified as it appears on the sleeve and therefore creates a misleading impression that consumers will get a free iPhone once they upgrade to Discovery Bank, when, in fact, that is not case.

In the circumstances, the Directorate finds that the advertising is misleading and therefore in contravention of Clause 4.2.1 of Section II of the Code of Advertising Practice.

Sanction

The Advertiser is requested to withdraw the advertisement in accordance with the provisions of Clause 14 and Clause 15.3 of the Procedural Guide. The process to withdraw the advertisement must begin with immediate effect.

Members of the ARB are instructed not to accept the advertising for publication.