

DECISION OF THE ADVERTISING REGULATORY BOARD

Complainant	Stefan Marnewick
Advertiser	Bombela Concession Company (RF) (Pty) Ltd t/a Gautrain
Consumer/Competitor	Consumer
File references	Gautrain – Stefan Marnewick
Outcome	Upheld
Date	11 September 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Stefan Marnewick against a Facebook post and radio commercials by Bombela Concession Company promoting the use of the Gautrain.

Description of the advertising

A male voice in the first radio commercial states:

“Time spent in Joburg and Pretoria traffic adds up to adds up to eleven days a year. What would you do with eleven extra days a year? Ride the Gautrain and have more time for your life. Gautrain for people on the move.”

A male voice in the second radio commercial states:

“Imagine if you were told that your life will be shortened by eleven days a year. That’s eleven days less that you get to spend with your family, your loved ones, your dog. Think about it. Eleven days. It’s what we waste while stuck in rush hour Joburg and Pretoria traffic. Get more time for your life with Gautrain. What would you do with eleven extra days a year? Gautrain for people on the move. Source INRIX Traffic Scorecard 2018.”

The screenshot of the social media post is as follows:



Complaint

The Complainant submitted that the claim regarding eleven days is false and misleading as it suggests that by using the Gautrain commuters will have eleven extra days to spend with their families or do what they please. This is not possible as commuters will still spend the eleven days in the train instead of a car. The complainant further added that

one also needs to take into account the journey times from home to the station, waiting for the train, the train journey and then the journey time from the train to the final destination.

Response

The Respondent submitted that:

- Its advertisements are not false and misleading.
- Its intention is to highlight the benefits of travelling by the Gautrain train service as compared to travelling by a private vehicle. One of these benefits allude to the punctuality and availability of the Gautrain service. In this regard, the messaging centres around the predictability of the Gautrain train service as compared to the unpredictable nature of road traffic in the Gauteng Province.
- Another benefit of the Gautrain's train service is time saving and the fact that the train travel times are not subject to road congestions.
- The INRIX 2018 Global Traffic Scorecard is an independent study that found that road users lose up to 11 days a year due to road traffic between Pretoria and Johannesburg.
- It accepts that not all Gautrain users will experience the same time saving as there are a number of external factors that ought to be taken into consideration. These include, as an example, the distance that a commuter lives from a Gautrain station and also the distance from a Gautrain station to the commuter's end destination. In creating content for the advertising campaign these factors were all taken into account. The radio advertisements refer listeners to the INRIX 2018 Global Traffic Scorecard as a source, and the social media post states that one could save up to 11 days a year (and also references the INRIX 2018 Traffic Scorecard).
- It will change the current campaign in its endeavour to keep its advertising material topical, however, unless instructed by the ARB to do so, it has not considered withdrawing the advertisement *per se*.

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.

Potential Undertaking

The principal sanction of the ARB is to have advertising that breaches the Code removed from publication. Therefore, if an advertiser undertakes to remove an advertisement and not use it again in future, that undertaking is accepted without considering the merits of the matter.

The respondent indicated that it will change the campaign, however, it has not given the Directorate an unequivocal undertaking not to use the claims complained against in future.

Given this, the Directorate cannot accept the undertaking but will proceed to look into the merits of the matter.

Merits

The essence of the complaint is that the advertising is false and misleading as it suggests that by using the Gautrain, commuters will have eleven extra days to spend with their families or to do what they please with the accumulated days.

Clause 4.2.1 of Section II states that advertisements should not contain any statement or visual presentation, which directly or by omission, ambiguity or exaggerated claim, is likely to mislead the consumer about the advertised product.

The Directorate considers that there are two aspects to this claim:

- Is it supported that road users lose 11 days in traffic?
- Is the communication of the lost time misleading?

The advertiser's response is that the INRIX 2018 Global Traffic Scorecard found that road users lose up to 11 days a year due to road traffic between Pretoria and Johannesburg. The Directorate accessed the website inrix.com/scorecard and duly found that it has published a dashboard indicating hours lost in traffic congestion in 2018 for different cities across the globe. The only information that the Directorate was able to extract from this dashboard relevant to the issue at hand is that in 2018 Johannesburg commuters lost 119 hours and Pretoria commuters lost 143 hours because of traffic congestion. It appears from the INRIX website that these figures relate to inner-city traffic congestion, as

opposed to inter-city traffic congestion. The Advertiser, however, seems to be under the impression that these figures relate to inter-city traffic between Johannesburg and Pretoria, which is also presumably where the Gautrain would provide the biggest time-saving for commuters.

The Directorate was unable to find anything in the report to substantiate the advertiser's statement that "The INRIX 2018 Global Traffic Scorecard ... found that road users lose up to 11 days a year due to road traffic between Pretoria and Johannesburg". It appears that the claim may be arrived at by adding the Johannesburg and Pretoria hours together, a view supported by the wording of the commercial which alludes to "adds up". However, this is based on false logic. No single consumer, in Johannesburg or Pretoria, loses 11 days a year in traffic. The most lost is by Pretoria commuters, who lost about 6 days.

It is also unclear whether the commuters canvassed for the scorecard included existing Gautrain users and the amount of time they spend commuting to and from the Gautrain stations, which would skew the numbers further.

The claim therefore fails at the first hurdle: the claim of "11 days a year" is not supported.

The next issue is, putting aside the question of how many days are lost in traffic, whether these days are in fact regained by Gautrain use. In other words, is the consumer actually going to get these days – whether 11 or otherwise – back to "*spend with your family, your loved ones, your dog*" as implied by the advertisement. In the social media post, the implication is that you would be able to use the time to have adventures, like sky-diving.

The Directorate accepts that not all Gautrain users will experience the same time saving as there are a number of external factors that ought to be taken into consideration when using the respondent's mode of transport. However, the question that is before the Directorate is not about time saving *per se* but about whether there is proof that at least some commuters will be able to save and accumulate these days and use them for something better.

The Directorate finds that the way the advertisements are worded, alluding to days and not hours, is problematic. The radio commercials state, for example: "*Time spent in Joburg and Pretoria traffic adds up to eleven days a year*" and "*What would you do with eleven extra days a year?*", and the social media post states: "*Save up to 11 days a year otherwise lost to Joburg and Pretoria traffic by riding the Gautrain*". This is problematic because it

gives the impression that consumers who use the advertiser's mode of transport could accumulate eleven days a year that they can then use however they choose.

In the first place, the consumer will not save ALL the time lost in traffic in any circumstances. They will still need to commute and this will still cost them time.

Secondly, the reality is that what will actually happen is that the consumer will save a few minutes or hours – depending on the situation – a day. They will not be able to magically combine this saving into some sort of extra days that can be used for some new activity.

The Directorate, as an exercise, performed the following calculation: If Johannesburg commuters lose 119 hours a year, calculating 20 working days a month, less 15 days leave, a commuter might save these hours over 225 days. This is just over half an hour a day. Now assume that using the Gautrain halves your travel time. Then you save 15 minutes a day. While this may be a benefit, it is far from the impression created by the commercial.

Given the above, the Directorate finds that the claims alluding to eleven days or up to eleven days that will be saved by consumers per year when using the advertiser's mode of transport creates a misleading impression and contravenes Clause 4.2.1 of Section II of the Code.

Sanction

The Advertiser is required to:

1. Withdraw the advertisements complained against in their current format. The process of withdrawing the advertisements must be actioned with immediate effect;
2. The process of withdrawing the advertisements must be completed within the deadlines stipulated in Clause 15.3 of the Procedural Guide. In the case of radio, this is "immediately as deadlines permit"; and
3. The advertisements may not be used again in their current format.