

## Decision of the ADVERTISING REGULATORY BOARD

First Complainant	Mrs. Nichola Samuels
Second Complainant	Mrs. Dorene Knight
Third Complainant	Mr. Lebogang Moselesele
Advertiser	Miway Insurance Ltd
Consumer/Competitor	Consumer Complaint
File reference	36+38+50 / Miway - Nichola Samuels & Others / 13-12-18
Outcome	Dismissed
Date	12 February 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider the complaints lodged by consumers against a MiWay television commercial.

### Description of the advertising

The commercial depicts a story of Bridget (a MiWay client who gets involved in a motor vehicle accident) and Nkosinathi (a MiWay call centre agent who assists Bridget).

Bridget is shown colliding into another car and MiWay call centre agent (Nkosinathi) contacts Aubrey Van Rensburg, informing him of the accident. Nkosinathi continues to call Aubrey enquiring about the state of Bridget, who is in hospital. Aubrey informs Nkosinathi that Bridget has been in a coma for the past 4 months. The commercial shows Aubrey having several conversations with Nkosinathi updating him on the progress until finally Bridget is able to speak to Nkosinathi herself.

The voice over then states “At MiWay we believe in going out of our way so that you can live your way.”

## Complaint

The First Complainant’s contention is that the commercial is misleading, as it is unrealistic to say a call centre agent saved someone’s life. The First Complainant also submitted that the content is disturbing and it is shown at times where young children can witness a woman driving at high speed and crashing into something, looking like a deliberate act.

The Second Complainant submitted that the commercial is graphic and is shown on many channels at peak viewing time, which is distressing and unsuitable for sensitive people and children. She also submitted that the company falsely portrays a service that it cannot offer, as it is unlikely that one consultant can be personally involved on each and every accident as depicted in the commercial.

The Third Complainant submitted that the commercial shows a woman driving a car and getting involved in a horrific accident, and it gives no warning to sensitive viewers especially those trying to get over painful memories of accidents.

## Response

The Respondent explained that a device called Emergency Alert alerts MiWay when there is high impact on a car or when a client is in an accident.

As background, the Respondent gave the following details regarding the story depicted in the commercial:

- Nkosinathi from the Call Centre received the Emergency Alert signal – which indicated that there had been high impact on Bridget Fuller’s car.
- He called Bridget, to check if she was okay. When she didn’t pick up the call, he immediately dispatched Emergency services to the scene of the accident. It turned out that Bridget had been involved in a horrific accident and subsequently spent over a year in hospital recovering.
- Nkosinathi kept in touch with Bridget’s family and Aubrey, checking up on her recovery progress, right until the day Bridget could speak to him on the phone. This would be an anomaly in any insurance process as the relationship or connection between the Call Centre agent and the client would ordinarily have ended after Nkosinathi dispatched emergency services to the scene of the accident.

The Respondent explained that the advertisement was part of the launch campaign and thus the media frequency on this was expectedly high. It submitted that the commercial is based on a true story and captures the events over the period of time, from the accident, to the hospital and her recovery. The fact that Nkosinathi cared enough to keep in touch with Bridget’s family while she was in a coma, while she was making slow recovery and could not speak, is testament to what MiWay promises its clients: “we go out of our way”.

The Respondent also submitted that a meeting was arranged for Nkosinathi, Aubrey and Bridget to meet for the first time and it filmed the meeting. The video was published on various social media platforms, and in the video Bridget herself actually says that if it was not for Nkosinathi, she would be dead.

It was also stated that although the commercial shows a high impact accident, it was mindful that the scene must be as realistic as possible and not show any injuries or blood. Furthermore, it submitted that the purpose of the advert was certainly not to upset viewers, but to tell a genuine true story. The aim of the commercial was also to educate viewers about the importance of fitting in an Emergency Alert device in your car, and how MiWay through this device, can be there its clients when they need it most. It also submitted some examples of the positive feedback it received on social media platforms from viewers regarding the impact of the advertisement.

## Application of the Code of Advertising Practice

The following clauses were considered in this matter:

Offensive advertising - Clause 1 of Section II

Fear - Clause 3.1 of Section II

Misleading claims - Clause 4.2.1 of Section II

Children - Clause 14 of Section II

## Decision

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

There are essentially two issues raised by the Complainants:

- The disturbing nature of the commercial;
- That Miway does not offer this level of service in every case.

### The disturbing nature of the commercial

Clause 3.1 of Section II of the Code states *inter alia*, “Advertisements should not without justifiable reason play on fear.”

The complainants submitted that the horrific car accident depicted in the commercial is not suitable for sensitive viewers and no warning is given about the content, especially to those trying to get over painful memories of accidents.

While the Directorate sympathises with the complainants who have trauma as a result of motor vehicle accidents and accepts that this commercial could possibly be perceived as triggering for those people, the Directorate needs to determine the probable impact of the commercial on the hypothetical reasonable person. This fictional, reasonable person is the normal balanced right thinking person who is neither hypercritical nor over sensitive.

The scene of the car accident in the commercial lasts only 4 seconds, and the entire commercial lasts 30 seconds. The advertisement depicts a woman driving when suddenly the car crashes into another car. The woman is then shown in a hospital bed with bandages on her head and bruises on her face. The execution of the car accident is done in such a way that no graphic images of blood and bodily injury are shown, the accident scene shows her vehicle colliding with another and pieces of broken glass flying about. The commercial ends with a positive note, and the woman is shown fully recovered and able to speak to the Miway Call Centre agent who assisted.

The overall aim is not to induce fear in viewers in the hope that they will buy the product lest they get involved in an accident. It is a representation of a true story that demonstrates how the product assisted a client in their time of crises. The commercial does not use images or communication that may be considered as disgusting, extremely graphic or gruesome to shock people into buying the product, as alleged in the complaints.

**In light of the above the, the commercial does not contravene Clause 3.1 of Section II of the Code as alleged by the complainant.**

The Complainants submitted that the commercial should carry an age restriction and a warning for violence as it is unsuitable for children.

Clause 14 of Section II states, *inter alia*, that advertisements addressed to or likely to influence children should not contain any statement or visual presentation which might result in harming them, mentally, morally, physically or emotionally.

Although the commercial depicts a car accident scenario, the commercial is not directed at children, and the Respondent submitted that the story is emotive and is true to the values of Ubuntu, and most importantly the story that has a wonderful and emotive ending. Children are exposed to similar scenes in programmes and movies considered to be suitable for family viewing, and would therefore be familiar with the context of the accident scene.

Given that the commercial is executed in a way that the accident scene does not use explicit images of injury to the body, and has a happy ending, the Directorate is satisfied that the commercial does not contain anything which might result in harming children mentally, morally physically or emotionally.

**It is therefore not in contravention of Clause 14 of Section II of the Code.**

Clause 1 of Section of the Code states “No advertising may offend against good taste or decency or be offensive to public or sectorial values and sensitivities, unless the advertising is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.”

For the reasons already set out above, the Directorate does not consider the commercial to be offensive.

It is also noted that the commercial was flighted extensively and over a long period, yet only three complaints were received. While the numbers of complaints will never be the decisive factor, it would not appear that the offence is widespread, sectorial or serious in terms of Clause 1 of Section II of the Code.

**Based on the above the commercial does not contravene Clause 1 of Section II of the Code.**

### Misleading claims

The Complainants submitted that it is unrealistic to say a call centre agent saved someone's life and it is impossible to have one consultant involved personally on every accident.

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 Respondent submitted that the commercial is a depiction of a true life story involving one of its client and call centre agent. It has also submitted that a video was uploaded on its YouTube channel, recording the meeting between Bridget and Nkosinathi, and it is noted that the client actually states "if it wasn't for you (Nkosinathi), God in you, I would be dead."

The Directorate understands the Complainants discomfort with the fact that one very unusual true story, arising out of an individual's compassion, has now been used to promote a company. However, this discomfort alone does not mean that the commercial is misleading.

The Directorate does not believe that the hypothetical reasonable person watching the commercial will understand it to mean that the Respondent will call its clients involved

in accidents until they fully recover. Rather, the story is told because it is an exceptional true story between Nkosinathi and Bridget. Nkosinathi's actions, although not in terms of company mandated policy, nonetheless represent the company policy: "At MiWay we believe in going out of our way so that you can live your way."

**Accordingly the commercial is not in contravention of Clause 4.2 .1 of Section II of the Code.**