

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Marina Smith
Advertiser	Uber Eats BV
Consumer/Competitor	Consumer
File reference	566 – Uber Eats – Marina Smith
Outcome	Upheld
Date	29 November 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Marina Smith against an email advertisement for Uber Eats.

Description of the advertising

The advertisement includes the following claims:



Get 50% off each of your first 2 orders*

Enter code at checkout:

and



*T&Cs: Get 50% off each of your first two orders with Uber Eats with a minimum basket size of R100 on each order. Valid for 7 days once the code has been applied. Valid for new Uber Eats users only. Valid in South Africa where Uber Eats is available. Offer cannot be used in conjunction with any other Uber Eats promos. Expires 11:59pm 5 November.

Complaint

In essence, the Complainant submits that she was only given a R100 discount on an order of R488. When she queried this with Uber, they said that the terms of their email advertisements state that the maximum discount is R100. The Complainant submitted, however, that while the advertisement states that a minimum basket size of R100 per order is required in order to get 50% off, it nowhere states that the maximum discount you can get is R100.

Response

The Advertiser initially made contact with the ARB and indicated that it was going to investigate this matter. Since then, however, the ARB was unable to secure a response on the merits from the Advertiser.

Application of the Code of Advertising Practice

The following clauses were 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 not responded on the merits in this matter and the ARB will therefore assume that it does not consider itself bound by the ARB and the Code of Advertising Practice.

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

The advertising offers “50% off each of your first 2 orders”, and includes what the consumer would expect to be all the conditions.

The Advertiser has not provided any clarity as to what happened in this matter, and the Directorate therefore has no choice but to accept the Complainant’s version of events. Based on this it appears that:

- It was the complainant’s first order;
- She spent R488.

Given the wording of the offer, the hypothetical reasonable person would expect to save R244 on this order. It appears that the complainant only received a R100 discount. Nowhere in the advertising before the Directorate is the discount limited to R100 – it is only the size of the order which must be over R100, which, in this matter, it was.

The Directorate has no choice but to conclude that the advertising in question was misleading and in breach of Clause 4.2.1 of Section II.

Sanction

Advertising of specials such as these is, by its nature, transient. The special has most likely expired, but in the event that it has not:

- The Advertiser is requested to amend the advertising to include all terms, or withdraw the advertising in its current form;
- Members of the ARB are instructed not to accept advertising for the special in question for publication.