

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Dennis Sibuyi
Advertiser	We Buy Cars (Pty) Ltd
Consumer/Competitor	Consumer
File reference	We Buy Cars- Dennis Sibuyi – 04 -12-18
Outcome	Dismissed
Date	11 February 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Dennis Sibuyi against the Advertiser’s print, website and radio advertising.

Description of the advertising

The voice-over on the radio advertisement states, *inter alia*, “**Do you own a car? Well sooner or later you’ll need to sell it. Getting your car sold can be real pain but not anymore. Webuycars.co.za will come to you and we’ll buy your vehicle in a quick and**

professional way... Don't waste another moment visit Webuycars.co.za, South Africa's number 1 car buying service. Webuycars.co.za, the easiest way to sell your car by far".

The print advertisement states, *inter alia*, "ANY MAKE OR MODEL".

The website states, "We buy ANY type of vehicle including, but not limited to, Cars, Motorbikes, Caravans . . .".

Complaint

The Complainant submitted that his main complaint is based on the print media. The advertisement states "any make or model". The Complainant asked them to buy his BMW X6M 2016 model, which is valued at R1.4million. The Advertiser advised that they would not buy a car at that value unless he would accept a lower offer. They advised that their threshold is R1million.

With regard to the radio advertisement, the Complainant submitted that it is implied that We Buy Cars can buy "any make or model" and for this part, the Complainant argued as a matter of law that it is implied that they claim to buy "any make or model".

Response

All reasonable attempts were made to secure a response from the Advertiser, but the Advertiser failed to respond.

The Directorate of the Advertising Regulatory Board (ARB) had no other option but to proceed to make a decision based on the information before it for the benefit and guidance of the ARB members.

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 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

Clause 4.2.1 of Section II 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 based his complaint on three types of advertising:

- Print advertising, which does indeed expressly state “any make or model”;
- Website advertising, which states, “***We buy ANY type of vehicle including, but not limited to, Cars, Motorbikes, Caravans . . .***”.
- Radio advertising, which makes no reference to “any make or model”.

The situation at hand is as follows: the Complainant wished to sell his car, valued at R1.4m, for its value. The Advertiser responded that they do not buy cars for over R1m, but would be prepared to buy it if he would take a lower offer.

The print advertisement does indeed state “any make or model”.

The Directorate accepts that the material before it does not appear to make reference to any terms and conditions, and that perhaps it could be clearer in this regard.

However, the Directorate considers that it is self-evident that the Advertiser would not always be prepared to buy a car for the value that the seller deems reasonable. In this case, the Advertiser IS prepared to buy and then sell the Complainant’s car, but not at the value that he wishes (and which may be a perfectly reasonable value through another channel).

It would therefore appear that they *do* buy and sell any make or model, but not at any price. The advertisement does not claim “any price” and the hypothetical reasonable consumer would understand that the Advertiser will make an offer of what they are prepared to buy the car for. It will not always be the price that the consumer considers fair, or even the price that is objectively fair. It is the price that the Advertiser is prepared to pay.

This becomes even more pertinent in regard to the radio commercial, which makes no reference to “any make or model”. It is implicit in the advertising that the consumer cannot set any price that they wish for a vehicle and expect the Advertiser to pay that.

In relation to the website advertising, while the above reasoning again applies, the Directorate also notes that the communication highlighted by the Complainant in fact relates to a completely different aspect of their offering: the fact that they buy different types of vehicles. The claim in this case does not imply that they will buy any make or model of vehicle, but that they will consider all types of vehicles.

The Directorate therefore does not find the advertising misleading.