

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Mr. Pierre Cassuto
Advertiser	Ithuba Holdings RF (Pty) Ltd
Consumer/Competitor	Consumer
File reference	2203 – Ithuba National Lottery –Cassuto
Outcome	Upheld
Date	6 October 2022

The Directorate of the Advertising Regulatory Board has been called upon to consider social media advertising published by the Advertiser on Twitter during August 2022.

Description of the Advertising

The campaign features, *inter alia*, explanatory videos by three South African artists explaining how each R5,00 spent on buying a lottery ticket contributes towards winning pay outs, covers the commission to retailers who sell the tickets, funds the lottery's operational costs, and supports various causes and organisations in South Africa. The comedy artists featured are:

- Schalk Bezuidenhout
<https://twitter.com/schalkiebez/status/1557688168752840704>
- Celeste Ntuli
<https://twitter.com/celestentuli/status/1557789298480619522>
- Skhumba Hlophe
<https://twitter.com/skhumbi/status/1557690708215070721>

Complaint

The Complainant pointed out that the hashtag “#KnowYourNationalLottery” trended to the number one position on Twitter in South Africa between 11 and 13 August 2022, without any conceivable explanation or news coverage to explain it.

In addition, only one of the three comedians featured (Schalk Bezuidenhout), incorporated the required hashtag “#ad” to disclose that this was a paid for advertising campaign. Neither of the other artists incorporated this indication.

Response

The Advertiser was afforded an opportunity to respond to the complaint, but no response was submitted. As such, the Directorate advised the Advertiser that it would be making a decision based on the submissions before it.

Application of the Code of Advertising Practice

The Directorate identified the following clauses of the Code to be relevant:

- Section II, Clause 12 – Identification of advertisements
- Appendix K, Clause 3 – Declaration of advertising
- Appendix K, Clause 6 – Influencer marketing

Decision

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

Jurisdiction

In the absence of a response from the Advertiser, the Directorate is compelled to consider and rule on the matter for the benefit of its members. The Directorate also notes that the Advertiser is not a member of the ARB. The ARB’s 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 its members. The ARB will 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

It is acknowledged that social media can wield incredibly persuasive power, which is why responsible advertisers are expected to ensure clarity and transparency when promoting a product or a cause.

Clause 12 of Section II contains certain requirements aimed at ensuring that the line between editorial or programming content and advertising content is never blurred. It stipulates, *inter alia*, that when there is any likelihood of confusion, advertising should be clearly identified as such. It also refers to the provisions of Appendix K (Social Media Code).

Appendix K to the ARB Code pertains specifically to social media marketing. It was incorporated into the Code to provide a clear set of rules that ensure the protection of consumers and the promotion of ethical conduct by brand marketers and their representatives.

Clause 6 of Appendix K deals with so-called “influencer marketing”, and contains certain parameters within which such marketing must occur. These require influencers to comply with the general provisions of the Code and any applicable marketing regulations, and

demand that influencers formally declare instances when they are provided with goods or services in exchange for media coverage.

Clause 3 of Appendix K (which appears to be the most relevant in this dispute) states, *inter alia*, that advertisers are required to "...disclose if content is part of a Social Media Advertising campaign as opposed to purely Organic Social Media". This appendix also defines "Organic Social Media" as "efforts or content which does not have Paid Advertising spend behind it".

As such, the Directorate turns to the provisions of Clause 3.3 of Appendix K, which reads:

"Marketers should pay particular attention to ensuring that paid social media advertising is obviously identifiable as such. A clear Social Media identifier must be included within the content of the tweet or post, in order to ensure that consumers reasonably understand this to be a Paid Advertising as opposed to an Organic Social Media endorsement".

This clause recommends the use of clear identifiers such as "#AD", "#Advertisement" or "#Sponsored". As correctly noted by the Complainant, only the post featuring Schalk Bezuidenhout incorporates the "#ad" identifier.

The Directorate acknowledges that viewers who watch these videos would ultimately notice the prominent use of the Advertiser's corporate logo and its catchphrase "PHANDA PUSHA PLAY" in the bottom corner of each screen. It further acknowledges the visual image of numbered lottery balls in the background, and the fact that the artists provide clarity and detail about the lottery to the point that this is unlikely to be a spontaneous or "organic" post.

However, this is only likely to be discovered after having watched any particular video in its entirety, meaning that consumers are not provided with the necessary indicators to immediately realise that this is sponsored or paid-for content, and not organic social media. It is accepted that some viewers will immediately assume that this is paid for content, this is not made clear in the manner required by the Code.

The Directorate also notes that while Schalk Bezuidenhout and Celeste Ntuli's videos appear on the Advertiser's official Twitter page, they simply appear as Retweets (see https://twitter.com/sa_lottery/status/1558027586579611648 as well as <https://twitter.com/krugersville/status/1557692956991266818>). This is significant as it

does not appear to achieve the objective behind Clause 3 of Appendix K, and may exacerbate the incorrect assumption that this is Organic Social Media, rather than advertising content produced at the instance of the Advertiser.

The fact that these videos all *ex facie* appear to feature on each respective artist's Twitter profile as a post means that followers are more likely to assume that this is organic content (save for the post by Schalk Bezuidenhout, which incorporates a clear reference to having made a "Lekker PSA" (Public Service Announcement) in cooperation with "LOTTO" and the hashtag "#ad").

This runs contrary to the intention and purpose of Clause 3 of Appendix K.

The Directorate also notes that the ease with which Mr Bezuidenhout has achieved the desired outcome is instructive in this matter.

As such, the Directorate agrees that the posts featuring Celeste Ntuli and Skhumba Hlophe do not appear to comply with the expectations of Clause 3 of Appendix K of the Code.

Sanction

In light of the above, the ARB's members are advised that the posts featuring Celeste Ntuli and Skhumba Hlophe do not appear to comply with the provisions of Clause 3.3 of Appendix K of the Code, and should not be accepted for publication unless this occurs in a manner that makes it immediately clear that this is paid for advertising content, and not organic social media.