

# WHO DO CONSUMERS COMPLAIN TO IF THEY WATCH OR HEAR AN ADVERT WHICH OFFENDS THEM AND WHAT IS THE RECOURSE PROVIDED TO THEM?

Category: Commercial Law, Media and OTT  
written by Mathando Likhanya | March 6, 2017



The Advertising Standards Authority (“**ASA**”) has a Code of Advertising Practice (“**the Code**”). The Code sets out guidelines and/or principles which must be complied with when advertising. These Codes apply to every type of advertising, every sector and any medium of advertising.

The Code contains 19 clauses which deal with different elements. This article deals with clause 1 of section II, which is offensive advertising. The section provides that:

- *No advertising may offend against good taste or decency or be offensive to public or sectoral values and sensitivities, unless the advertising is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.*
- *Advertisements should contain nothing that is likely to cause serious or wide-spread or sectoral offence. The fact that a particular product, service or advertisement may be offensive to some is not in itself sufficient grounds for upholding an objection to an advertisement for that product or service. In considering whether an advertisement is offensive, consideration will be given, inter alia, to the context, medium, likely audience, the nature of the product or service, prevailing standards, degree of social concern, and public interest.*

Taking the contents of this clause into account, it is somewhat difficult as what one person finds offensive may not be offensive to the next person. Recent ASA rulings that illustrate how cases are dealt with:

- The Dial Direct Insurance advertisement which portrays a tourist family dining at a restaurant in Vilakazi Street. A voiceover then states “Hello, We at Dial Direct are working very hard to make insurance a lot less like a tourist ordering a Happy Meal in Vilakazi Street. You misunderstand the language in your policy, and you could be in for quite a surprise when you claim”. The father is then given a sheep’s head (which was ordered as part of the specials on the board at the restaurant). The voice over again says “At Dial Direct we have online chat and dedicated agents to help you understand exactly what you’re getting. So dial us today and take the unsure out of insure. Dial Direct”.

- The complainant filed the complaint on the basis of it being misleading<sup>[1]</sup> and offensive. She was of the view that alleging that the advert portrayed the cuisine served at the restaurants in bad light which may affect the service and lead to the owners losing business. The respondent's defence was that they had been trying to promote their online chat feature which assists insurance policy holders to understand the terms of their insurance policies. They further stated that it was meant to be a humorous and light-hearted advert.
- The directorate having looked at all the factors presented dismissed the complaint as the directorate was of the view that the repeated intention behind the advert and/or humour was clearly carried across to the viewers and objectively would not be interpreted as misleading or offensive.
- The Cell C advertisement which shows a man having to pay for various purchases and each time he makes a purchase, he is astonished at the cost and thereafter a dog comes and humps his leg. This occurs throughout the various stores, until he gets to a Cell C store and after he makes a payment, the dog leaves him and moves on to another person.
- Complaints were forwarded to the ASA by certain members of the public as the advert was seen as offensive. Different sections of the code were taken into consideration, being: offensive advertising; misleading claims; children; and the use of animals in advertising.
- A decision was made by the ASA on the various sections of the Code that the complainants had felt had been violated. The matter was dismissed after having considered similar type of cases referred to the ASA. This was on the basis that although the commercial contained a sexual metaphor, such was aimed at an audience that would understand and be able to get the message Cell C was trying to convey. The respondent being Cell C was reminded not to flight the advert during watershed periods and any programming that may reach the children audience.

The cases are an illustration of how the different clauses of the Code are applied in practice and the various considerations that are taken into account by the ASA in reaching a decision. Further it is indicative of the fact that consumers have a forum at which they may lodge complaints, as well as the manner in which the complaints are dealt with by the ASA.

<sup>[1]</sup> Section 4.2 of the Code – *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.*