

YOU RIGHTS AGAINST DECEPTIVE ADVERTISING

Category: Media and OTT

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Introduction

Advertising is pervasive in today's modern age and unavoidable. From the moment you open your internet browser, to when you travel to work, there is someone trying to get you to buy what they are selling. With thousands of companies competing for your attention, they employ various tactics to draw attention to their products and services. But what happens when advertisers take it too far and mislead consumers? What happens when you open your online purchase, and it is not what you expect and you realise you have fallen prey to deceptive advertising?

What Is Deceptive Advertising?

Deceptive advertising, which is also known as false advertising, refers to a manufacturer making use of confusing, misleading, or blatantly untrue statements to promote a particular product or service.

How is Deceptive Advertising Regulated?

According to Section 29 and Section 41 of the *Consumer Protection Act 71 of 2008* (“**the CPA**”), sellers are prohibited from making false advertisements, which are aimed at misleading consumers to purchase the goods offered or enter into contracts which they would otherwise not have concluded.

The Advertising Regulatory Board (“**the ARB**”) is responsible for the regulation of the advertising industry and plays an important role in ensuring that consumers are kept protected by ensuring that the provisions of the CPA are enforced and adhered to. It does this by considering the Code of Advertising Practice (“**the Code**”), which is based on the International Code of Advertising Practice, prepared by the International Chamber of Commerce. The ARB, together with relevant industries such as marketing and communication, frequently considers the Code in accordance with the needs of the country. The Code is divided into sections. Section 1 talks about how to interpret the Code, section 2 sets out the basic rules of advertising and section 3 sets out the respective rules for specific situations. To determine whether an advertisement is deceptive and the type of deception you may have suffered, the starting point will be to consider the provisions of section 2. According to the Code, advertisements should be factual, honest, informative and truthful. They must not be used to exploit the consumers lack of knowledge. Information contained in advertisements should not in any way mislead consumers through any omission, ambiguity, and inaccuracy of the information which the consumers will rely on.

What to do if you are a victim of Deceptive Advertising

There are multiple remedies available if you have fallen victim of deceptive advertising. Firstly, you may approach the courts and institute legal proceedings against the person or company which has advertised their products or services deceptively. Alternatively, you may approach the National Consumer Commission (“**NCC**”). The NCC is a regulatory body which is aimed at protecting the interest of consumers. It does this by conducting investigations of any alleged contravention of the CPA and refers matters to the National Consumer Tribunal for prosecution. In addition to the above, you may lodge a formal complaint with the ARB. There is no fee required for consumers to lodge a complaint with the ARB, however, there are procedural steps which must be followed when making the complaint. In brief, the complaint must be made in writing, have sufficient details of the complainant, clearly set out the grounds for the complains and the advertisement in question must be attached to the complaint. Consumers may complete the online form published on the [website](#) and companies may submit the complaints via electronic mail to complaint@arb.org.za. The ARB has prescribed fees for when business lodge complaints against each other. The ARB has no jurisdiction on any person or entity who is not a member. This means that it may not issue any instruction, make a ruling or sanction against the non-members. However, the ARB will have jurisdiction on its non-members if a submission to its jurisdiction is made by the non-members. Rulings made by the ARB will be binding on its members and not to non-members. Although the rulings are not binding on non-members, adverse findings can lead to reputational harm for businesses especially as the rulings are made public.

On [2 September 2023](#), the ARB made an order pertaining to a consumer’s complaint against advertising by LeatherBags Cape Town on Facebook. In this case, the consumer alleged that the advertisement contained words that stated that the bag advertised is made of leather, however, the advertisement contained a caveat that the leather bags are made from high quality artificial leather. The consumer approached the ARB for relief and the seller was given the opportunity to appear and make representations, but they failed to do so. The ARB applied the provisions of clause 4.2.1 of section 2 of the Code. This clause states that “*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 ARB considered the information provided by the complainant and held that if an item is advertised as being made from leather, it must be made from leather and not artificial leather. A ruling stating that the advertisement was ambiguous,

misleading in addition to being in contravention of clause 4.2.1 was made. The ruling is not binding on Leatherbags as the advertiser, because it is not a member of the ARB, but Leatherbags may make submissions to be bound by the ARB's decision. Rulings which relate to non-members are used as guidelines for its members.

Conclusion

We are exposed to multiple advertisements from the moment we go online. Sellers tend to take advantage of this and advertise their products, some of which can be misleading or deceptive. Therefore, it is important to know your rights and how you can enforce them, to protect yourself from falling victim of deceptive advertising. If you would like to know more about your rights as a consumer or a business, please do not hesitate to [contact us](#).