

## Decision of the ADVERTISING REGULATORY BOARD

Complainant	Torga Optical (Pty) Ltd
Advertiser	Spec-Savers South Africa (Pty) Ltd
Consumer/Competitor	Competitor
File reference	1130 – Spec-Savers – Torga Optical
Outcome	Dismissed
Date	15 December 2020

The Directorate of the Advertising Regulatory Board has been called on to consider a complaint by Torga Optical against Spec-Savers' television commercial posted on YouTube at <https://www.youtube.com/watch?v=twTFCWJuvhs>. The Complainant submitted that the commercial was also broadcast on "*certain channels on DSTV*".

### Description of the Advertising

The commercial states, *inter alia*, as follows:

*"Are you looking for the best sunglass deal in the country this summer? The Spec-Savers buy-1-get-1 summer promotion is back and it's bigger than ever. Get a free pair of branded single vision sunglasses up to the value of R3000. Yes, free branded prescription sunglasses. To qualify, simply purchase a comprehensive eye examination and prescription frame and lenses. Visit us today or book online ..."*

### Complaint

The Complainant argued that the commercial communicates a claim that is capable of objective substantiation. The word "*best*" implies something that is of the most excellent or desirable type or quality or the most appropriate or well advised. This may pertain to price, quality, and/or value and even, due to the fact that it pertains to prescription

sunglasses, possibly professional assessment. It is not communicated as puffery, as the claim is contextualised to suggest that the “*best*” deal available is the Advertiser’s buy-1-get-1 summer promotion.

The advertisement neither sets out the basis for such statement nor provides substantiation for its claim as advertised. Unless the Advertiser is able to provide adequate substantiation, the claim should be ruled to be in contravention of the Code and should be removed.

The Complainant alleged that using “*best*” to describe any professionally related service may constitute an example of impermissible canvassing in terms of the Health Professions Council of South Africa (“HPCSA”) Rules. However, because this allegation falls outside the scope and mandate of the ARB and its Code of Advertising Practice, the Directorate will not consider this specific allegation. Should the Complainant wish to pursue this aspect of the complaint, it will have to approach the HPCSA.

## Response

The Advertiser submitted that the question posed in the commercial is clearly its own subjective assessment of the desirability of the Spec-Savers Summer Promotion. There is no possibility of consumers being misled in any way about any aspect of the goods and services offered.

Clause 4.2.2 of Section II of the Code permits subjective assessments of one’s own offerings, and it is the Advertiser’s subjective assessment that customers looking for sunglasses this summer season would be hard pressed to beat its “free” promotion. It added that the commercial goes as far as quantifying the value of its “free” portion to avoid confusion.

## Application of the Code of Advertising Practice

In light of the complaint, the Directorate considered the following clauses of the Code to be relevant:

- Section II, Clause 4.1 (Substantiation)
- Section II, Clause 4.2.1 (Misleading claims)

## Decision

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

Clause 4.1 of Section II compels advertisers to hold independent verification for any objectively verifiable claims made.

Clause 4.2.1 of Section II stipulates that advertisers may not mislead consumers by means of ambiguity, exaggeration, omission or any other means.

The primary question the Directorate therefore has to answer is whether or not the Advertiser's commercial communicates a claim that is capable of objective, independent verification.

The commercial starts by asking viewers whether they are "... *looking for the best sunglass deal in the country this summer?*" At this time, the text on-screen displays the Advertiser's logo and reads "**BEST DEAL**".

It is worth noting that the claim simply refers to the "... *best sunglass deal in the country*". It is unlikely that consumers would have a uniform expectation of what constitutes a "*sunglass deal*", let alone expect an objective method to measure what would constitute the "*best*" sunglass deal.

The Complainant argues that this claim is capable of objective verification. It does not, however, advance any argument as to the context in which such substantiation should exist. It states "*there are a number of variables which need to be considered. These apply to pricing, frames, lenses, medical aid pricing, and quite possibly professional assessment*".

It appears as if the Complainant is unsure as to how the claim is likely to be contextualised and interpreted. The Complainant concludes that the inherent ambiguity in this statement is a contributory factor, which would likely mislead consumers, because the claim sets out no basis for its use, and offers no evidence of its legitimacy.

The Advertiser submitted that Clause 4.2.2 of Section II of the Code (dealing with "Puffery") permits the use of subjective opinion when promoting one's product or service. It submits that this claim clearly falls within this category of claims.

Clause 4.2.2 of Section II reads as follows:

*“Value judgments, matters of opinion or subjective assessments are permissible provided that:*

- *it is clear what is being expressed is an opinion;*
- *there is no likelihood of the opinion or the way it is expressed, misleading consumers about any aspect of a product or service which is capable of being objectively assessed in the light of generally accepted standards.*

*The guiding principle is that puffery is acceptable when an expression of opinion, but unacceptable when viewed as an expression of fact”.*

For the advertiser’s claim to be objectively verifiable, it would have to be communicated in a context that lends itself to objective, factual substantiation. It is trite that claiming to be the “*best*” does not automatically render such a claim capable of proof, because such a claim may, in the absence of any specific context, simply be a subjective opinion of one’s own superiority.

In a dispute dealing with the claim to be South Africa’s “*Best Network*” (refer the ruling of the Final Appeals Committee of the ARB in the matter Vodacom / MTN / 2018 – 7263F), the Advertiser was taken to task for perpetuating a perception that its superiority claim was based on network performance data, when it was actually based on consumer preference data. This demonstrates that a superiority claim based on a specific context implies and requires evidence to support such a claim in that specific context.

As noted earlier, the Directorate doubts that consumers would uniformly agree on what would constitute a “*sunglass deal*”, and by extension the “*best*” sunglass deal, which suggests that the claim is likely to be interpreted as subjective value statement, and not a factual claim.

After posing the question to consumers, the commercial continues: “*The Spec-Savers buy-1-get-1 summer promotion is back and it’s bigger than ever*”, and the voice-over explains that, in terms of this promotion, customers are eligible for a free pair of branded prescription sunglasses to the value of up to R3000 if they purchase a “*comprehensive eye examination*” and “*prescription frame and lenses*”. The terms of the deal are therefore made very clear to the consumer.

Armed with this information, a reasonable consumer would likely interpret the commercial to suggest that Spec-Savers have a particular offer, which it believes to be the “*best sunglass deal in the country*” because of the inherent value offered.

The claim is not phrased in such a manner that it suggests any official ranking, testing, comparison or objectively scrutiny. By the Complainant’s own admission, the superiority claimed could, conceivably, relate to pricing, frames, lenses, medical aid pricing, or professional assessment. This inherently creates an absence of any concrete context against which the claim could be evaluated, or considered to be objectively verifiable. Put differently, to prove that the Advertiser’s offer constitutes the “*best*” in a manner that satisfies all potential interpretations, and measures all plausible variables, is simply impossible. The Directorate is not convinced that any reasonable person would expect the claim to be a factual claim, backed by evidence, that measures all possible permutations of preference, price, brands, components, professionalism, etc.

The “*sunglass deal*” referred to is contextualised as a value-add: “... *free pair of branded single vision sunglasses up to the value of R3000*”. While it can be accepted that some consumers might not regard this as the “*best*” sunglass deal in their subjective opinion, it does not change the fact that this remains a subjective claim, communicated as permissible puffery in terms of the Code.

As a consequence, the criteria contained in Clause 4.1 of Section II do not apply to this particular execution, because the claim is expressed as a subjective value statement, and not as an objective fact capable of independent substantiation.

**The commercial is therefore not in contravention of Clause 4.1 of Section II, as it does not communicate a claim that requires objective verification in terms of this clause.**

Given the above, it is unlikely that consumers would be misled by the claim. As noted earlier, the vague reference to a “*best sunglass deal*” would be interpreted as a subjective proposition.

The Complainant correctly noted that potential variables that impact on one’s subjective opinion of whether or not this is the “*best*” deal could include pricing, frames, lenses, medical aid pricing, and quite possibly professional assessment. Given that a reasonable consumer might incorporate one, some, or all these variables in their own subjective decision-making process, it is unlikely that they would expect specific comparative criteria to apply to the claim.

The commercial articulates the nature of the offer, explains to consumers why the Advertiser regards this as the “*best sunglass deal*”, and clarifies the qualifying criteria.

**Accordingly, the commercial does not communicate its offer in a misleading manner that breaches the provisions of Clause 4.2.1 of Section II of the Code.**