

Flimsy flight prices

The Advertising Standards Authority (ASA) of South Africa recently ruled that South African Airways (SAA) breached the Code of Advertising Practice by offering airfares without clarifying that additional taxes might double the price. The ruling comes in the wake of talks between the ASA and Association of South African Travel Agents (ASATA), aimed at regulating the clear advertising of prices for airfares and packages.

RULING OF THE ASA DIRECTORATE

In the matter between:

ZAID OMER - FIRST COMPLAINANT

MR T A COSKEY - SECOND COMPLAINANT

and

SOUTH AFRICAN AIRWAYS (PTY) LIMITED - RESPONDENT

5 June 2006

SAA SENSATIONAL AIRFARE PROMOTION/Z OMER AND ANOTHER/4503

Consumer complaints were lodged against an SAA email message for its "Sensational Airfare Promotion" that was sent directly to one of the complainants during January 2006, as well as Internet advertising that appears on www.flysaa.com.

The advertisements contain, inter alia, offers for "One Way" trips between Cape Town and Durban at R171.00 and "One Way" trips between Johannesburg and Durban at R114.00. The advertising on the www.flysaa.com website indicates the prices as "from R171.00*" and "from R114.00*" respectively.

The disclaimer "ABOVE FARES INCLUDE VAT BUT EXCLUDE AIRPORT TAXES (ZA) & 'YR' SECURITY LEVY" appears on both advertisements.

COMPLAINTS

In essence, the complainants submitted that the advertising is misleading, as the amount payable for additional taxes is more than that of the advertised ticket prices, which increases the eventual amount payable significantly.

RELEVANT CLAUSE OF THE CODE OF ADVERTISING PRACTICE

In light of the complaint, Clause 4.2.1 of Section II of the Code (Misleading claims) was taken into account.

RESPONSE

The respondent denied that the promotion is misleading and submitted, inter alia, that:

- Given that the promotion was for a limited period and that prices advertised were lower than prices normally charged, it would have not been profitable to risk including all charges as this could have impacted negatively on the revenue expected on discounted prices.
- The extra charges are dollar denominated and as such fluctuate on a daily basis. It is therefore impractical to include these in the actual price.
- Given that it is impractical to include all charges, the customer was alerted to the applicable taxes and was informed that the web booking would reveal what the additional charges are.
- VAT is included in the advertisement, but not other taxes or charges that the customer ultimately has to pay. The consumer is informed of this upfront in a prominent manner using capital letters. This is in accordance with Clause 19 of Section II as well as with previous rulings made by the ASA [refer Holiday Tours/M Lukas/1151 (4 May 2005)].

ASA DIRECTORATE RULINGThe ASA Directorate considered the relevant documentation submitted by the respective parties.

The advertising contains a disclaimer, "ABOVE FARES INCLUDE VAT BUT EXCLUDE AIRPORT TAXES (ZA) & 'YR' SECURITY LEVY".

Clause 4.2.1 of Section II (Misleading claims) 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.

In Holiday Tours/M Lucas/1051 (4 May 2004), the ASA obtained an opinion from the Association of South African Travel Agents (ASATA) which confirmed that the taxes payable on air travel tickets fluctuate on a daily basis and it is not practical to include these in the actual price. The Directorate accepted this and recognised that the full price cannot be stated in advertising of this nature.

However, in a subsequent matter Sure Travel/K Daniel/1107 (14 June 2005), the Directorate ruled that where the actual price is more than double the advertised price, it becomes critical to alert the consumer to which taxes are applicable. The same principles apply in this matter.

The Directorate requested clarification from the respondent regarding the incorporation of additional taxes, as it appears ex facie that the taxes are relatively stable and can be incorporated into advertising with relative ease.

While the respondent did not confirm or deny this, it submitted that it is ready to explore new ways of advertising so as to avoid possible misrepresentation. It also stated, "we therefore will welcome guidance that would assist us in promoting and advertising our fares in a manner that is not interpreted to be ambiguous, misleading or exaggerated".

The advertisement states that the advertised prices exclude taxes.

While the Directorate accepts that the respondent cannot quote the exact eventual price of the ticket, the discrepancy between the quoted price and the actual price is larger than a hypothetical consumer would expect. It is accepted that the disclaimer alerts the consumer to a discrepancy, but it does not alert the consumer to the size of the discrepancy. It appears ex facie that the ticket price can, in fact, double. The hypothetical reasonable person would not realise this from the disclaimer in the current advertising. The price discrepancy must therefore be communicated in a manner that

sufficiently alerts the consumer to the fact that the advertised price is not necessarily in the vicinity of the actual price.

The Directorate is therefore of the opinion that the consumer would be misled by the discrepancy between the advertised and actual prices. The advertisements are therefore in breach of Clause 4.2.1 of Section II of the Code.

The respondent is required to:

1. Withdraw the advertisements in their current format;
2. The process of withdrawing this advertisements must be actioned with immediate effect;
3. The process of withdrawing the advertisements must be completed within the deadlines stipulated in Clause 15.3 of the Procedural Guide; and
4. The advertisements may not be used again in the future.

The complaints are upheld.

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