

Parodies in advertising: Addressing the hippo in the room

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A recent advertising parody has caused quite a stir at the watering hole, and left consumers questioning whether Hippo.co.za may have been out of line.



Image source: Mchal Bednarek – [123RF.com](#)

The advert, which has already garnered over half a million views on YouTube alone, is a parody of Outsurance's "saver" advertisements that appears to spoof the original advertisements that featured Katlego Maboe as presenter. In the advert, a female driver and male passenger travel in a car, while discussing car insurance. The male passenger, who bears a striking resemblance to Maboe, is then ousted from the vehicle, when it becomes apparent that the driver could have saved more on her current insurance, had she used Hippo.co.za's platform to compare insurance quotes.

After no doubt seeing purple, Outsurance instituted urgent proceedings to interdict Hippo's conduct, arguing that the advertisement implies that Outsurance overcharges its clients and creates an impression that the insurer cannot be trusted to offer competitive short term insurance products. Outsurance further argued that the advertisement constitutes an anti-competitive act, that the advert infringes its common law and intellectual property rights, and that the advert contravenes the Financial Advisory and Intermediary Services Act's General Code of Conduct, the South African Insurance Association's Code of Conduct, and the Advertising Regulatory Board's (ARB) Codes of Advertising. The matter was, however, dismissed by the Pretoria High Court, after it was held that Outsurance had failed to prove the requisite level of urgency. As a result, Outsurance was ordered to pay the costs of the application. The advert will also continue to feature across media platforms.

This article is limited to the regulation of advertising, specifically.



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Regulating body

The ARB is a self-regulatory, membership-based entity which makes decisions that guide both its members and broadcasters, in practice. The recent decision handed down by the Supreme Court of Appeal in the matter of *ARB & Others v Bliss Brands* confirms that while the ARB does not have jurisdiction over non-members, it may still consider the advertising and issue decisions relating to adverts created by agencies and brands that do not belong to the industry body, for the benefit of its members and broadcasters. This is important, as the ARB's decision will guide whether its members elect to publish or broadcast a particular advertisement or not (based on its determination of whether it deems an advertisement as being contrary to its Code).

While it is difficult to comment on Outsurance's specific arguments without having had sight of the papers, it is likely that Outsurance's legal team would have referenced and relied on the general principles contained in the ARB's Code. One such provision regulates truthful presentation. Those who have seen the advertisement will recall that the driver, after seeing the Hippo's smartphone, refers to the fact that she could have saved R300 on her existing insurance quote. In terms of the ARB's Code, Hippo should have had credible documentary evidence at hand to support this claim before the advert was published. It is insinuated that the Hippo mascot has all the "receipts" necessary to back the claim, saved on his trusty smartphone. The other relevant principles contained in the ARB's Code include the rules governing price comparisons, disparagement, comparative advertising and imitation.

Parodies not prohibited

Hippo will, no doubt, in any response filed in due course, argue that this advert, which pokes fun at Outsurance, was created as a parody. The ARB Code specifically allows for "harmless parody", if the parody is intended to catch the eye or to amuse. The advertiser must, however, be able to show that the advert is seen as clearly humorous or hyperbolic and is not likely to be understood as making literal claims for the advertised product.



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The ARB Code also includes a general prohibition on the exploitation of advertising goodwill, prohibiting advertisements which take advantage of the advertising goodwill relating to a trade name or symbol of the product or service of another, or the advertising goodwill relating to another party's advertising campaign or advertising property, unless prior written permission has been obtained. Parodies, however, are specifically excluded from the general prohibition, provided that the intention of the parody is primarily to amuse, and which is not likely to adversely affect the advertising goodwill of another advertiser to a material extent. In these cases, the ARB would consider factors such as the likelihood of confusion, deception and the diminution of advertising goodwill. It will be interesting to see whether Outsurance could substantiate an argument that it has acquired advertising goodwill in the concept of having a discussion with a driver in a moving car relating to car insurance, which Hippo has possibly exploited.

At this stage, it seems as though Outsurance has only approached the High Court for relief (likely in the pursuit of an interdict on the basis of unlawful competition). Without having had sight of the papers in the urgent matter, however, it is difficult to comment on the evidence led by Outsurance. It would be interesting to see how muddy the waters get, if Outsurance decides to bring a fresh application before the normal motion court or, alternatively, the ARB.

It remains to be seen whether Hippo may one day find itself in deep waters, and in the writers' opinion, much will turn on whether this advert qualifies as a parody.

ABOUT THE AUTHOR

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