

SOUTH AFRICA / JUDGMENT

Misleading advertising (201512-0005306)

[2016] ZACGSO 6 (19 April 2016)

[2016] ZACGSO 6**COURT**

Consumer Goods and Services Ombud

BEFORE

N Melville

CASE / FILE NUMBER

201512-0005306

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RECOMMENDATION**1. Dispute identification**

Complaint No.

: 201512-0005306

Nature of dispute

: Misleading advertising

Adjudicator

: N Melville

Date

: 19 April 2016

2. Summary of the complaint

The Complainant has been a member of the supplier's club for almost 20 years. On 15 September 2015, she received an annual combined statement which reflected a projected membership and reservation fee of R 7000.65 due on 30/9/2015 and a membership fee account in the amount of R6873.82. According to the statement, the explanation of the fees is provided in the electronic magazine. There the membership and reservation fee is said to relate to the annual levy charged by the various resorts.

The statement contains the following paragraph:

Debit Orders

If you've not yet signed up your account by debit order, be sure to do so and save. By paying your annual fees in advance over 12 months, you automatically qualify for a 5% discount when paying via debit order. When paying with credit card you'll get 2% discount. Contact our Collections Department to set up your debit order.

Further on in the document there is prominently announced : 5% discount when paying via debit order. Linked via asterisks is the explanation: By paying your annual fees in advance over 12 months, you automatically qualify for a 5% discount when paying via debit order or a 2% discount when paying via credit card. Importantly, there is no reference to any other provisos or terms and conditions.

The complainant contacted the supplier to take up the offer but failed to do so because, in her view, their agent misinformed her and as a result she lost 5% discount on the fees for 2016. It seemed to her that the supplier was willing to offer the discount only on the 2017 fees.

3. Details of steps taken to resolve the complaint

Taken up with the supplier by email.

4. Outcome proposed

The complainant seeks the 5% discount on the 2016 fees as well as the 5% discount for the paid 2017 fees by way of debit order from October 2016.

5. The response of the supplier

In response to the complainant's call to the supplier:

A 5% discount is given to clients who prepay their annual membership and reservation fees for 12 months in equal installments via debit order. The discount is given on the actual fees invoiced on the 1st of September.

Since we are only advised of the percentage increase for the annual fees in late August for the fees to be invoiced on 1st September, we do not have the exact fees figures to calculate the monthly debit order amount. The figures we use for the calculation are an estimate, based on the fees charged the previous year plus a projected increase percentage. E.g. This year you were charged R6873.82 so for next year we will estimate a 13.81% increase, so your projected fees for 2017 to be invoiced on 01/09/2016 will be R7823.00. Although we might use an estimated 13.81% increase this year, the next year the estimated increase might differ.

You will notice on the statement I sent you that the projected fees are now reflecting R7823.00. This is different from the last statements you received as we have been experiencing a system problem with the projected amounts. Hopefully this has now been resolved and the fees you see now should remain as is until we are aware of the actual figures to be invoiced on 01/09/2016.

We would then use the projected fees for 2017 of R7823.00 and divide it by 12 months (October 2015 to September 2016) + R7.90 debit order fee. Your debit order would then be R659.82 if started by 01/10/2015. If all the payments were successful, the system will automatically allocate your discount on 27/09/2016 on the fees that were charged on 01/09/2016.

If we do start a debit order for your fees from 01/01/2016, the amount will be R877.12 (R7823.00 divided by 9 months + R7.90 debit order fee). Although it will not be 12 instalments this year, we are prepared to manually pass the discount on 27/09/2017 for you. Please note that next year the projected fees will be calculated over 12 months start 1 October 2016.

If, on the 1st of September, when your fees are invoiced you have an excess credit on your account, we will deduct this from the following years projected fees and calculate a new monthly debit order amount. If there is a short fall, we will

add it to the following years projected fees and calculate a new debit order amount. Please note that since we are working on estimates for the monthly deduction you can either be in a little credit or debit when the fees are invoiced.

I have requested a copy of the call recording from 10/09/2015 regarding your conversation with S. and I am awaiting their feedback. As I explained, I think there may just have been some confusion regarding the dates as we charge 2017 fees in September 2016.

The prepayment option via debit order and the discount was purely introduced to assist clients who are unable to settle their fees in 1 payment. As you are a valued customer, we would like to resolve this issue so you can continue enjoying the benefits of being a club member.

7. The Complainant's reply

They are in the process to trace a telephone call where after they will contact me again, as it seems that their agent misinformed me and because of that I lost 5% discount on my fees for 2016. It further seems that they are willing to offer the discount now on the 2017 fees. I must still look at the implication thereof, alternatively the 5% discount on the 2016 fees should be refunded as per their advertisement because of the fact that their agent misinformed me and should I then receive the 5% discount for 2017 fees by way of debit order from October 2016 as it should be.

8. Telephone call

I do not propose to have the telephone call, a recording of which was made available to us, transcribed. I certainly agree with the supplier's statement that there was some confusion. The parties to the conversation were totally at cross purposes and as a result the complainant abandoned her attempt to do the necessary to claim the 5% discount.

9. Consideration of the facts

I must confess to having had some difficulty in understanding the facts of this matter. The variation in projected fees and actual is not at issue. The confusion arises as to the time periods involved. In its correspondence the supplier says: "We would then use the projected fees for 2017

[I have difficulty in understanding why fees for 2017 came into play at the end of 2015] of R7823.00 and divide it by 12 months (October 2015 to September 2016 [This seems to mean the fees for 2017 are paid in 2016]) + R7.90 debit order fee. Your debit order would then be R659.82 if started by 01/10/2015. If all the payments were successful, the system will automatically allocate your discount on 27/09/2016 on the fees that were charged on 01/09/2016.

It is not, however, necessary, to unravel this. The supplier appears, by saying the repayment option via debit order and the discount were purely introduced to assist clients who are unable to settle their fees in 1 payment, to mean that this option was not intended for those who were already paying their entire fee in advance as the complainant seemed to be doing. If this is so, it is making an error as the wording of the statement does not make it clear that the offer is thus restricted. The supplier has shown a willingness to resolve the matter and has offered to manually pass the discount, but refers to 27/09/2017, in spite of it being said the installment would be started by 01/10/2015.

Recommended resolution

Whether this is indeed the intention of the supplier or not, it is recommended that the complainant be permitted to pay by debit order monthly (if she has not already paid the lump sum in advance) and either way be credited the discount for the 2016 fee for the full period at 27/09/2016. As to the 2017 fee, the complainant should again be eligible to claim the discount by paying the debit order monthly if the offer is still available for 2017.

I earnestly request the supplier to take more care in ensuring that payment options are easily understood and that the call center personnel do not add to the confusion.

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Prepared on 10 October 2026 · Esheria