

## Decision of the ADVERTISING REGULATORY BOARD

Complainant	Jarred Gebhardt
Advertiser	Takealot Online (RF) (Pty) Ltd t/a Takealot.com
Consumer/Competitor	Consumer
File reference	2798 - Takealot - Jarred Gebhardt
Outcome	Upheld
Date	19 September 2023

The Directorate of the Advertising Regulatory Board has been called upon to consider a consumer complaint lodged against a Takealot.com online advertisement promoting its Daily Deals that was published at [www.takealot.com](http://www.takealot.com).

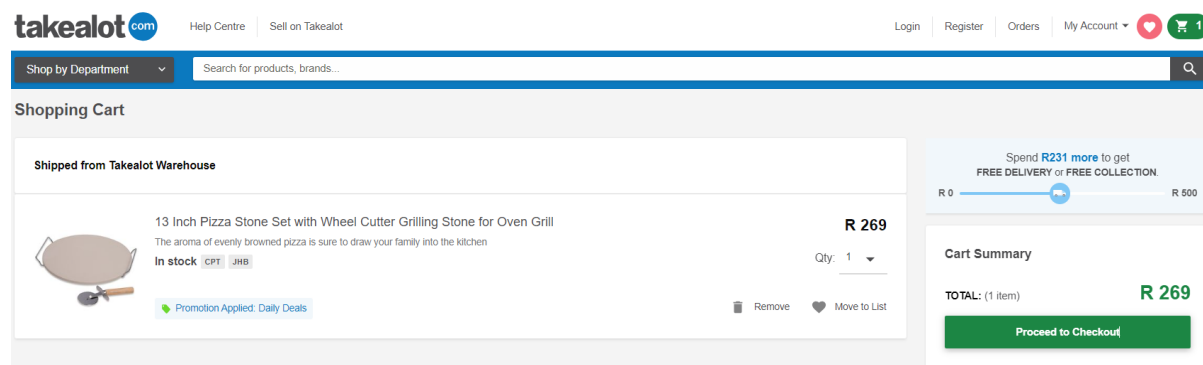
### Description of the advertising

The Complainant submitted the following image:

The screenshot shows the Takealot.com website interface. At the top, there is a navigation bar with the Takealot logo, a search bar, and links for Help Centre, Sell on Takealot, Login, Register, Orders, My Account, and a shopping cart icon. Below the navigation bar, there is a 'Daily Deals' banner with the text 'FREE NEXT-DAY DELIVERY & COLLECT' and 'Daily Deals New deals loaded daily'. Underneath the banner, there is a 'Refine by Category' sidebar on the left with categories like Home & Kitchen, Sport, Garden, Pool & Patio, and Computers & Tablets. The main content area displays 'Sponsored Deals' with three items: Kenwood Prospero+ Kitchen Machine (R 2,949), Kenwood Fry XL Digital Air Fryer (R 1,199), and Snuzza Hero MD (R 1,160).

## Complaint

The Complainant is of the opinion the advertisement is misleading as he was still prompted to add more items to reach the cost of over R500 to get free delivery upon adding a *DAILY DEAL* item to the cart. He submitted the following screenshot as proof:



The Complainant submitted that there was no free next-day delivery on his initial order, despite the claim promising such. The Complainant further added that he could not find any explanation regarding the lack of free next-day delivery even when he reviewed the “*T&C apply*” message through the supplied link.

## Response

The Advertiser stated that:

- It does not submit to the jurisdiction of the ARB, and its response should not be interpreted to mean that it agrees to the ARB's jurisdiction, or that it is bound to any decision made by the ARB.
- It refers the Complainant (who cannot find the explanation for next-day delivery criteria) and the ARB (to assess the complaint) to its customer help centre at <https://www.takealot.com/help-centre/delivery/next-business-day-delivery>, where the next-day delivery criteria is sets out.
- It cannot take the matter further than to state that the criteria for the free next-day delivery had not been met by the Complainant, as the Complainant did not supply more information relating to the complainant.

## Application of the Code of Advertising Practice

The following clause was considered in this matter:

- Misleading claims - Clause 4.2.1 of Section II

## Decision

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

### Jurisdiction

The Directorate notes the Advertiser's response that it does not submit to the jurisdiction of the ARB and its response should not be interpreted to mean that it agrees to the ARB's jurisdiction or that it is bound to any decision made by the ARB.

For the purpose of clarity, the Directorate notes that Clause 3.3 of the Memorandum of Incorporation of the ARB states:

*“3.3 The Company has no jurisdiction over any person or entity who is not a member and may not, in the absence of a submission to its jurisdiction, require non-members to participate in its processes, issue any instruction, order or ruling against the non-member or sanction it. However, the Company may consider and issue a ruling to its members (which is not binding on non-members) regarding any advertisement regardless of by whom it is published to determine, on behalf of its members, whether its members should accept any advertisement before it is published or should withdraw any advertisement if it has been published.”*

In other words, if you are not a member and do not submit to the jurisdiction of the ARB, the ARB will consider and rule on your advertising for the guidance of its members.

### Merits

Clause 4.2.1 of Section II cautions advertisers that advertisements should not contain any statement or visual presentation, which directly or by omission, ambiguity or exaggerated claim, is likely to mislead the consumer about the advertised product.

The claim in question appears above the DAILY DEALS heading and states “FREE NEXT DAY DELIVERY”. The aspect of the claim that the Complainant takes issue with is the

“free” delivery, as he was only able to claim free delivery once he had spent over R500. The “free delivery” is therefore not available on all Daily Deals offers.

The Directorate notes that the Advertiser’s response indicates that the Complainant should consult the customer help centre where the criteria for the next-day delivery is set out, as it appears that the Complainant had not met the set criteria to have his/her purchase delivered free of charge.

The link that the Advertiser provided leads to a page that reads:

If your order is eligible for next business day delivery, it will be displayed as a delivery option during checkout. **A ‘Next Day’ badge seen on the product details page does not guarantee next day delivery.**

We offer next business day delivery during checkout if all products in the order meet the following criteria:

- All products in the order must be in-stock
  - For Cape Town Metro customers, all products must be in-stock at the Cape Town distribution centre
  - For Johannesburg, Pretoria and Durban customers, all products must be in-stock at the Johannesburg distribution centre
  - For all other areas, all products must be in-stock at the nearest distribution centre
- No products longer than 1.4 meters in length and width
- No bulky products (35 kg volumetric or more)

In addition, please note:

- Eligibility is subject to available courier capacity at the time the order is placed
- Alcoholic products are limited to delivery only and cannot be collected
- Next business day delivery may be subject to a premium delivery fee

This does not, in fact, shed any light on the issue of FREE delivery. The information is, however, available at [About delivery fees | Help Centre | takealot.com](#).

However, this is, in any event, moot. It is trite that one cannot clear up a misleading impression created within an advertisement with explanations hidden in the terms and conditions.

The claim states:



The implication is that all Daily Deal offers are subject to free delivery. There is no clarification such as “on orders over R500” (as the Directorate has previously seen on the Advertiser’s offers). In addition, there is no asterisk next to the word “free” or other alert that there is a qualification on the “free” offer. Finally, there is no link in the vicinity of the claim to the relevant explanations in the terms. Even consumers familiar with the Advertiser’s delivery policies might be led to believe that for these special Daily Deals, the R500 requirement has been waived.

**In light of the above, the Directorate is of the view that the unqualified claim “*FREE NEXT-DAY DELIVERY...*” is misleading, as delivery is only free once a spend threshold of R500 has been met. It is therefore misleading by omission, and in contravention of Clause 4.2.1 of Section II of the Code.**

### [Instruction to members](#)

Members of the ARB are advised not to accept advertising for the Advertiser offering “FREE DELIVERY” without any clarification or indication that there is a spend threshold before one qualifies for the free delivery.