

Consumer Goods, Services & Retail and Dispute Resolution



26 May 2025

South Africa

Phantom vehicles have
real consequences



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Phantom vehicles have real consequences

Advertise a vehicle you do not have, and you may find (as a Gauteng motor dealer recently discovered) that the Advertising Regulatory Board (ARB) will take a dim view of imaginary stock.

The matter concerns a dealership that listed a Jetour T2 2.0T Odyssey vehicle for sale online, despite holding zero units of the advertised vehicle in stock.

A consumer, having seen the advertisement and made enquiries regarding the vehicle, lodged a complaint with the ARB, describing the advertisement for the listing of a vehicle as *"misleading, bait marketing and a violation of the Consumer Protection Act"*, designed to *"lure customers under false pretences"*. The vehicle in question was listed by the dealership on cars.co.za as readily available for purchase for R679,900 (or an estimated R12,043 per month) with a mileage of 15 kilometres (effectively the delivery mileage of a brand new vehicle).

Golden Era Motors, trading as Jetour Pretoria (dealership), put forward numerous submissions to the ARB to defend the advertisement and why a consumer could not have expected to immediately purchase the advertised vehicle. These submissions included that:

- *"everyone does it"*;
- supply constraints of the vehicle were due to limitations of the allocation systems (which are dependent on production and distribution);
- the advertisement constituted a *"forward order"* to assist with allocation of the vehicles; and
- the allocation constraints were communicated to the consumer by a sales executive when it was addressed.

The ARB's finding

Unmoved by the dealership's submissions, the ARB agreed with the consumer and directed the dealership to withdraw the advertisement. The ARB reminded the dealership that an explanation is not a disclaimer, and consumers clicking the link *"enquire now"* in regard to a listing are not unreasonable in expecting the advertised car to exist.

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The legal machinery to address this conduct is substantial. Section 30 of the Consumer Protection Act 68 of 2008 (CPA) prohibits advertising goods as being available at a specified price in a manner that may mislead consumers regarding actual availability. If limitations are stated, the supplier must honour them. The only statutory defence is if the supplier offers equivalent goods at the advertised price within a reasonable time and the consumer unreasonably refuses.

Sections 29 and 41 of the CPA provide additional cover. Section 29 prohibits misleading or deceptive marketing, while section 41 targets representations that goods *"are available or can be delivered or performed within a specified time"* when they are not. The legal ramifications are further emphasised in section 40 of the CPA, which states that a supplier should not make use of unfair tactics against a consumer to market or supply goods or services as that would be considered unconscionable conduct.

The ARB administers the Code of Advertising Practice. Specifically relevant to these facts are clauses 4.2.1 and 16, providing that suppliers should not mislead consumers with inaccuracies and exaggeration; publish advertisements without assurance that they can supply any demand created as a result; and advertise unavailable or non-existent goods to assess public demand.

In addition to the assistance of the ARB in ensuring suppliers' compliance with the CPA, the National Consumer Commission (NCC) may investigate, issue compliance notices and refer similar matters to the National Consumer Tribunal, which can (according to section 112 of the CPA) impose administrative fines of up to 10% of annual turnover or R1 million (whichever is greater) – not an insubstantial risk for a single-branch dealership.

The message to suppliers of goods and services is clear, if your advertising is geared at collecting monies that your business cannot cash, expect consequences. The CPA's bait marketing provisions exist to stop suppliers dangling attractive listings to generate foot traffic or accumulate orders they cannot fill. If the goods or services advertised are not on your lot and cannot be delivered within a reasonable time, either say that prominently or do not list the vehicle in the advertisement. The regulatory cost of a withdrawn advert is zero, whereas a referral to the ARB, NCC or Tribunal will cost far more.

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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