

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Ethel Zulu
Advertiser	Mobile Telephone Network (Pty) Ltd
Consumer/Competitor	Consumer
File reference	1986 – MTN – Ethel Zulu
Outcome	Upheld
Date	15 June 2022

The Directorate of the Advertising Regulatory Board has been called upon to consider a consumer complaint against a MTN print advertisement appearing in a catalogue.

Description of the advertising

The relevant part of the advertisement appears below:

SAMSUNG Galaxy S21 5G

High-resolution multi-lens camera
The fastest chip ever in Galaxy
All-day intelligent battery
Super smooth 120Hz display

ADD
a Samsung Galaxy A22 5G
from **R29 PMx36**
OR **R49 PMx24**

eSIM ENABLED

While stock lasts

Cash Deal R21 549

MTN MEGA TALK XS
OR
MTN MEGA GIGS XS

Samsung Galaxy S21 5G (256GB)
5G Enabled | HD Voice

R449
PMx36

OR

MTN MEGA TALK XS
OR
MTN MEGA GIGS XS

R899
PMx24

Complaint

In essence, the Complainant is of the view that the Advertiser is misleading its customers with inaccurate information because it leads the consumer to believe that a consumer is able to purchase a Samsung mobile handset on a contract, of either 24 or 36 months, for the prices as advertised, i.e. R899.00 or R449.00 per month, respectively. In addition, and as part of a special offer, a consumer may purchase a second mobile handset for the additional price of R49.00 or R29.00 per month, respectively.

The Complainant was informed by the sales consultant that the price of taking the 36-month contract, together with the second handset, would actually amount to R728.00 per month, and not R478.00 as per the advertisement.

Response

The Advertiser did not submit a response, although it was given an opportunity to do so.

Application of the Code of Advertising Practice

The following clause was considered in this matter:

- Misleading claims - Clause 4.2.1 of Section II
- Pricing policy – Clause 19 of Section II
- Cellular telephones and mobile networks – Clause 15 of Section III

Decision

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

While the Advertiser in this matter did not submit a response to the complaint, its attorneys have recently sent a letter to the ARB in a different matter where it indicated as follows:

“Thank you for affording MTN an opportunity to respond to Mr Kekana’s complaint. MTN remains committed to the principles of self-regulation and is grateful for the ARB’s work in this regard.”

The Directorate is therefore satisfied that the Advertiser considers itself bound by the ARB’s decisions.

Merits

Clause 4.2.1 of Section II states 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 essence of the complaint is that the advertisement is misleading as to the price of the product(s) and service being offered.

The question before the Directorate is whether the advertisement may mislead consumers into believing that they will be able to purchase both mobile telephone handsets and a service contract for a period of either 24 or 36 months, for the prices as advertised, i.e. R899.00 (+49.00) or R449.00 (+29.00) per month, respectively.

The Directorate is of the opinion that the way the advertisement is formatted will lead the hypothetical reasonable person to believe that the offer is all inclusive and that there are no further charges to be applied. The Advertiser has provided no explanation as to why this was not the case.

Upon closer examination of the fine print on the page in question, the last line states as follows: "*For full terms and conditions on all products and promotions see page 51 or visit www.mtn.co.za*".

Pg 51 contains an assortment of QR codes, which you may scan to view further terms and conditions and other information. At this juncture it is notable that the page is confusing and there is a lot of product specific information, which the ordinary consumer is not likely to be familiar with.

Once you have scanned the correct QR code, you are taken to another page, where there are many drop-down menus, the titles of which are again confusing and product specific. Whilst the drop-down menus refer to different promotions and many other items, none seem to provide for additional charges to be applied on the particular promotion in question. It is noted that even if the explanation is there, this is simply fixing a misleading impression already created by the advertisement. The advertisement itself still creates the impression that the deal is available as stated.

There is no explanation before the Directorate as to what occurred with the Complainant, nor is there evidence to show that a consumer may be able to purchase both mobile telephone handsets and a service contract for a period of either 24 or 36 months, for the advertised prices of R899.00 (+49.00) or R449.00 (+29.00) per month, respectively.

Based on the above, the Directorate finds that the advertising is misleading. The advertisement is therefore in contravention of Clause 4.2.1 of Section II.

Sanction

The Advertiser is required to withdraw or amend its advertising for this offer to include all costs / charges that a customer is required to pay in order to take up the offer. The Advertiser's attention is drawn to Clause 15.5 of the Procedural Guide.