

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Makhosini Kekana
Advertiser	Mobile Telephone Network Proprietary Limited (MTN)
Consumer/Competitor	Consumer
File reference	1932 – MTN – Makhosini Kekana
Outcome	Upheld
Date	23 May 2022

The Directorate of the Advertising Regulatory Board has been called upon to consider a consumer complaint against advertising for the Double Your Bundle promotion by MTN.

Description of the advertising

The complaint referred to an SMS that the Complainant received for a promotional product called “Double Your Bundle” (“the SMS Advertisement”). The SMS Advertisement read:

“Pay once, get it twice! For only R27 get 60 Any-Net min + 60 Any-Net min free, valid for 7 days. Dial *142# and select DoubleYourBundle. OptOut dial *135#”

Complaint

The Complainant submitted that he had received the above mentioned SMS advertisement and when he tried to purchase the voice bundle for the advertised value to double his bundle, he was not able to do so. The Complainant is of the view that the advertised offer was not available nor did it exist. The Complainant further stated that he purchased airtime which he would not have purchased had he not been misled by the SMS Advertisement.

Response

In the response to the ARB, the Advertiser denied that the SMS advertisement was misleading. The Advertiser explained that the personalised offer environment was dynamic and offers changed regularly. Additionally, the Advertiser stated that offers provided to customers were dependent on a customer's spend, usage and take up preferences.

The Advertiser stated that where time has lapsed between the time that the message was sent to a customer and when the customer viewed the offers, there was a chance that the *offer could have changed and/or expired*. Similarly, if there were "any database errors in the rendering process", this may also have had an impact. Notwithstanding the above, the Advertiser noted that offers for Double Your Bundle would have still been available and would have allocated double the value, even if *that specific offer* was no longer available.

The Advertiser stated that it was also possible that there was an error in the message that was sent, in that a message with an offer could have been mapped to the incorrect cohort. Despite this, the customer would still have offers available and all offers would have still provided Double Your Bundle for the customer, if selected.

The Advertiser further stated that in all MTN messages where offers are provided, customers are notified that terms and conditions apply to the services offered, which was to make customers aware that there are certain limitations to the services provided.

Finally, the Advertiser stated that should the ARB deem it necessary, a gesture of good will may be offered to the Complainant to ensure that he understands that that the current incident was not a standard to measure the quality of services provided by MTN.

The Advertiser made two submissions to the ARB, the essence of which were largely the same. Its response was sent to the Complainant and the Complainant confirmed that there was not a significant lapse between the time the personalised offer was made and attempting to purchase the bundle. He further stated there had been a few subsequent similar offers made by the Advertiser after he lodged the complaint whereafter he immediately checked if the offers existed and it did not. The Complainant pointed out that the SMS Advertisement did not indicate that the offer was subject to certain terms and conditions, as alleged by the Advertiser. The Complainant's response was shared with the Advertiser, after which the ARB received the Advertiser's final response. In addition to what was stated above, the final response also stated that the screenshots provided with the complaint made it difficult for the Advertiser to ascertain the time lapse between when the message with the offer was sent to the customer, and when the customer dialled *142#, and further information in this regard would be helpful to the Advertiser.

Application of the Code of Advertising Practice

The following clause of the Code of Advertising Practice (the “Code”) was considered in this matter:

- Clause 4.2.1 of Section II – Misleading advertising

Decision

Clause 4.2.1 of the Code states that “*Advertisements should not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer.*”

At the outset, the Directorate notes that the Advertiser’s response provides a general overview of what could have gone wrong with the promotion resulting in the Complainant not being able to take up the offer, and is not specific to the complaint and what actually transpired with the Complainant. The Directorate understands that *generally* there is a validity period between the date on which the Advertiser sends a message to a customer to take up the Double Your Bundle offer and date on which the customer actually takes up the offer. This is a common principle with promotional offers and is not unreasonable and which is accepted by the Directorate.

However, this does not appear to be the case here. In the follow up response from the Complainant, he stated that there was “no significant time lapse” between the time he received the SMS Advertisement and when he dialled *142# to take up the offer. In other words, the offer did not lapse but was simply not available for him to take up. The Advertiser has failed to demonstrate to the Directorate that the Complainant was out of the 7-day validity period as indicated in the SMS Advertisement. The Advertiser requested the Complainant’s details so that they could conduct an investigation into the matter. The Directorate understands that the Advertiser has sophisticated systems that would allow it to verify the date on which the Complainant received the SMS Advertisement, and the date on which he dialled *142# to take up the offer. If it was the case that the Complainant tried to take up the offer after 7 days of receiving the SMS Advertisement, then it would have been quite simple for the Advertiser for provide this evidence to the Directorate. However, no evidence of this has been provided to the Directorate.

The Directorate also understands the Advertiser's general explanation in relation to system errors that may have occurred in that a "message with an offer could have been mapped to the incorrect cohort." If this was the case, it would mean that the SMS Advertisement was not intended for the Complainant and he received the message in error. However, the Directorate notes the Advertiser has in fact failed to categorically state or show that the Complainant in fact received the SMS Advertisement in error. Again, it confuses the Directorate why the Advertiser requested the Complainant's details to conduct an investigation and yet failed to provide specific details in relation to what actually occurred with this Complainant.

Instead, the Advertiser stated that *other offers for Double Your Bundle* would have still been available and would have allocated double the value, even if *that specific offer* was no longer available. This cannot be accepted by the Directorate. If the Complainant received the SMS Advertisement, and the Advertiser has not indicated that an error has occurred resulting in this Complainant receiving a SMS that was not meant for him, then the specific offer made in the SMS Advertisement must be available for the Complainant to take up, and not other Double Your Bundle offers. Although subsequent messages from the Advertiser to the Complainant are not before the Directorate for consideration, it does provide some indication that these messages, including the SMS Advertisement, may be misleading as these offers are not available for customers to take up.

The Directorate also agrees with the Complainant that the SMS Advertisement does not contain any statement that terms and conditions apply, which would indicate that some restrictions or limitations apply to the offer. In any event, this does not mean that the simple addition of the words "terms and conditions apply" rectifies an advertisement that is otherwise misleading.

If the Advertiser made an offer to the Complainant in the SMS Advertisement, and the offer was simply not available for the Complainant to take up within the time periods stated in the SMS Advertisement, then this is misleading and the SMS Advertisement is in breach of the Code. The Directorate has nothing in front of it from the Advertiser to explain why the offer contained in the SMS Advertisement was not available to the Complainant to take up.

Finally, the Directorate would like to clarify that the ARB does not, and will never, "deem it necessary" or prescribe to Advertisers to offer Complainants gestures of goodwill to resolve a complaint, or to make up for a negative experience. This gesture, if made at all,

should be made entirely by the Advertiser and does not involve the ARB in any way whatsoever.

Based on the above, the Directorate considers the SMS Advertisement to be misleading and in contravention of Clause 4.2.1 of Section II of the Code.

Sanction

The Advertiser is required to:

1. Withdraw all advertisements advertising Double Your Bundle offers in its current format. The process of withdrawing the claim must be actioned with immediate effect. Alternatively, the Advertiser must ensure that all Double Your Bundle offers are indeed available as offered;
2. The process referred to in point 1 must be completed within the deadlines stipulated in Clause 15.3 of the Procedural Guide. In the case of the internet this is “two weeks or as determined otherwise by the ARB”. The Directorate recognises that the use of this claim may be widespread, and therefore will allow the two weeks; and
3. The Double Your Bundle offers made in the SMS Advertisement may not be used again in its current format if the offer is not available as advertised.

The Advertiser is reminded that in terms of Clause 15.5 of the Procedural Guide, offending advertising is to be withdrawn from every medium in which it appears.