

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Jayden Gelman
Advertiser	MTN Group Limited
Consumer/Competitor	Consumer
File reference	2211 – MTN – Gelman
Outcome	Upheld
Date	20 October 2022

The Directorate of the Advertising Regulatory Board has been called upon to consider a consumer complaint against MTN Group Limited advertising for the Samsung S22.

Description of the advertising

An MTN promotional booklet ‘Y’ello Trader’ offers various packages with the Samsung S22 models, along with a free 25W Samsung adapter.

Choose your deal

MTN Mega Talk	XS 100 min	S 240 min	MTN Mega Gigs	XS 2GB	S 4GB
Anytime Data	50 min	120 min	Anytime Data	1GB	2GB
Streamling	250MB	500MB	Streamling	500MB	1GB
Social	250MB	500MB	Social	500MB	1GB
MTN-to-any network			MTN-to-any network	25 min	50 min

Choose your device

FREE 10GB Start-up bundle

5G your life on SA's best network*
Enjoy blistering speed, reduced latency and make slow downloads and buffering a thing of the past.

Samsung Deals

Samsung Galaxy S20 FE
LTE | HD Voice

Samsung Galaxy S21 FE 5G (128GB) 5G Enabled

Samsung Galaxy S22 5G Enabled

Samsung Galaxy Z Flip3 5G 5G Enabled

Samsung Galaxy S22+ 5G Enabled

Samsung Galaxy S22 Ultra 5G Enabled

MTN Mega Talk 100 min **XS**
MTN Mega Gigs 2GB

MTN Mega Talk 240 min **S**
MTN Mega Gigs 4GB

R389 PHx36
R499 PHx24

R469 PHx36
R579 PHx24

R469 PHx36
R599 PHx24

R539 PHx36
R669 PHx24

R649 PHx36
R899 PHx24

R719 PHx36
R969 PHx24

R719 PHx36
R899 PHx24

R749 PHx36
R999 PHx24

R819 PHx36
R1069 PHx24

R899 PHx36
R1299 PHx24

R969 PHx36
R1369 PHx24

Cash Deal **R11 849**

Cash Deal **R16 479**

Cash Deal **R21 549**

Cash Deal **R24 669**

Cash Deal **R24 839**

Cash Deal **R31 739**

ADD

FREE 25W Samsung Adapter

Join, upgrade or recharge with bund Dial *234# or download the MTN App

Ask for your personalised upgrade and save

Complaint

The Complainant that the MTN promotion of the Samsung S22 range deals in the Y'ello Trader booklet offered a free 25W Samsung Charging Adapter with any of the Samsung S22 range deals. The Complainant said that once he received the phone, he was told that the offer was only available while stocks last, and limited to 1000 customers. When the Complainant disputed this, he says the MTN store employee pointed him to a section of fine print on the bottom of the previous page of the booklet, stating "while stocks last".

The Complainant points out that there was no asterisk on the section of the page with the special offer to indicate that there was fine print relevant to the promotion. The Complainant felt that this was misleading, as he now had to purchase a charger, which did not come with the phone. He states: *“MTN should have done more to communicate that it was limited. If there was a note saying ‘while stocks last’ near the promotion, I would have enquired about stock prior to completing the purchase, and would have avoided disappointment. The advertisement is misleading.”*

Response

The Advertiser responded, *inter alia*:

- *“While it is common practice to include an asterisk or superscript number to denote that qualifying statements apply to an offer, it is not a requirement to do so. The Directorate of the Advertising Regulatory Board has previously held in Vox Fibre – Dr Christopher McCreanor – 3 September 2019 – that: ‘The Directorate accepts that any offer which involves an ongoing service relationship, such as the provision of fibre services, there will be terms and conditions, often embodied in a contract. Whether or not the advertiser refers to these terms and conditions, generally or specifically, the reasonable consumer would understand that they apply. This means that an advertisement that fails to refer to the conditions, whether specifically or generally, will not automatically be misleading.’
“Accordingly, the advertisement cannot be automatically misleading by virtue of the fact that an asterisk was not used to denote the terms and conditions or qualifying statements applied to the Advertisement. In the circumstances, the reasonable consumer should be aware that terms and conditions apply to the various advertisements contained in the Y’ello Trader.”*
- *“The fine print on the first page of the Y’ello Trader provides: ‘For full Terms and Conditions on all products and promotions, see page 51 or visit mtn.co.za.’ The wording in the fine print on page 1 of the Y’ello trader makes it clear that all products and promotions in the Y’ello Trader are subject to terms and conditions and this is brought to the attention of consumers right at the outset.”*
- *“While the Advertiser acknowledges that page 25 of the Y’ello trader does not contain any fine print or qualifying statements, page 24 does. In relation to the promotion for the free adapter, the fine print on page 24 reads: ‘Free Travel Adapter: Purchase a qualifying Samsung device between 01/08/2022 – 31/08/2022*

and receive a 25W Samsung Travel Adapter (Valued at R499), in store only. Travel adapter is not in box. Limited quantity and strictly while stocks last.”

The Advertiser submits that pages 24 and 25 should be read together and page 25 in particular cannot be viewed in isolation.

- *The Y’ello Trader is formatted in such a way that the various deals/offers are segmented by device brand and/or contract i.e. Samsung, Apple, Oppo and Sky pages each have a segment in which their respective devices and packages are advertised. The layout of each segment is often presented over two or more pages. Accordingly, while a deal should be viewed in its entirety in order to fully understand what device is being purchased, the accompany packages, and/or terms.*
- *Notwithstanding the above, the Advertiser notes that the advertisement and the promotional offer were only available for a limited time period which period has now expired. Accordingly, the promotional offer is no longer advertised and available to customers.*
- *In the circumstances, the Advertiser denies that the advertisement falls foul of the provisions of the Code of Advertising Practice published by the Advertising Regulatory Board, and further denies that the Advertisement was misleading.*

Application of the Code of Advertising Practice

The following clauses were considered in this matter:

- Misleading claims – Clause 4.2.1 of Section II
- Non-availability of advertised products – Clause 16 of Section III

Decision

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

Clause 4.2.1 of Section II of the Code of Advertising Practice states: *“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 customer.”*

Clause 16 of Section III states: *“Advertisements should not be submitted for publication unless the advertiser has reasonable grounds for believing that it can supply any demand likely to be created by the advertising.”*

The Directorate is therefore called upon in this instance to assess whether the presentation of the special offer and the fine print in relation to the Samsung S22 models was likely to mislead the consumer.

The Advertiser cited *‘Vox Fibre – Dr Christopher McCreanor – 3 September 2019’* which states that, *“The Directorate accepts that any offer which involves an ongoing service relationship, such as the provision of fibre services, there will be terms and conditions, often embodied in a contract. Whether or not the advertiser refers to these terms and conditions, generally or specifically, the reasonable consumer would understand that they apply.”*

However, in the case of the MTN special offer, it’s not a contract governing an ongoing service relationship that is being considered, but a special offer relating to a free item’s availability at the start of the contract. The Directorate therefore finds that this comparison is not relevant to this matter.

The Advertiser further stated that the terms and conditions were referred to at the beginning of the Y’ello Trader, and again in the page facing the special offer, clearly stating the limitations of the special offer, and that there is no requirement to direct consumers to the terms and conditions with an asterisk. The Directorate therefore contemplated whether enough had been done to clarify that a condition applied to this specific special offer – that the stock of the free charger was limited – especially since it is not unreasonable for a consumer to assume that a new phone would come with a charger plug (referred to as a ‘travel charger’ in this instance).

The Directorate disagreed with the Advertiser’s contention that a mention of the terms and conditions at the start of the booklet is sufficient to convey the existence of such terms and conditions to the consumer. Special offer booklets such as the Y’ello Trader are not read like a book, from cover to cover, but rather paged through, as the consumer looks for a relevant product or offer. A consumer might specifically flip to the section containing the brand of phone that they are considering buying. The Directorate therefore believes that the Advertiser should do whatever they can to clearly convey the existence of all relevant terms on a section-by-section basis.

The Advertiser further pointed out that the terms and conditions for that section of the booklet were available on the page facing the special offer in question (page 24 and 25) and submitted that these pages should be read together. The Directorate debated this matter. On one hand, the Directorate acknowledges that the relevant terms and conditions were present on the facing page of the Samsung S22 special offer, which was part of the continuous Samsung section of the booklet.

On the other hand, the Directorate contemplates that this complaint could easily have been avoided had the Advertiser taken the simple and easy extra step of including an asterisk or stating “while stocks last” beneath the block offering the free travel charger, rather than relying on the consumer’s understanding of the design of the booklet.

Ultimately, what tipped the Directorate, is the nature of the item in question. This is not a “nice to have” extra but a vital tool for using a new phone. The Directorate accepts that there appears to be a new trend that devices are sold without chargers, but this is certainly not yet an established norm. In the first place, it is unclear that this device IS in fact sold without a charger, as the “extra” charger is advertised as a “travel charger” rather than as the only charger. But given that it is the only charger, the unavailability of the “travel charger” is a material factor in how much the consumer would need to spend to use the product, and therefore a material factor in the buying decision.

Given this, the failure to draw sufficient attention to the limited stocks makes the advertising misleading, and in breach of Clause 4.2.1 of Section II.

The Advertiser mentions that the special offer is no longer available in any event, but the Directorate will still issue a ruling on a concluded campaign as a useful reference point for future campaigns, given that this situation is likely to arise repeatedly.