

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Mr. Malcolm Moorhouse
Advertiser	Cell C Limited
Consumer/Competitor	Consumer
File reference	Cell C – Malcom Moorhouse - 15-01-19
Outcome	Dismissed.
Date	5 February 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Mr Moorhouse against Cell C's Website advertisement accessed at www.cellc.co.za/cellc/lte-coverage-map.

Description of the advertising

The coverage map for Cell C products in the area “De Villiers Street, Parys” indicates the following:

- 2G is available
- 3G is available
- LTE Advanced is available
- Fixed LTE is not available
- C-Fibre-Live is not available
- C-Fibre is coming soon

Complaint

The Complainant submitted that he ordered a 4G router from a company called Axxess, but was eventually refunded for his subscription and router as the service advertised was not available in the area of De Villiers Street, Parys. Axxess also amended its website to indicate that the 4G coverage is not available. However, when the Complainant checked Cell C's coverage map, it showed that 4G was available in De Villiers Street, Parys. When the Complainant called Cell C's customer care agent, he was informed that indeed the 4G service the Complainant is not offered in particular area in Parys. Therefore the Complainant alleges that Cell C is intentionally misleading customers as it advertises that 4G is available in an area where the service or product has been confirmed to be unavailable.

Response

The Respondent denied the Complainant's allegations. It submitted that the Axxess is a third party reseller of Cell C's fixed-LTE (or fixed 4G) products and services. It also explained that Axxess appears to have sold the Complainant a fixed-LTE service and router, but later refunded the Complainant as he was not able to use the service in his area (Parys). It further submitted that Axxess only resells fixed-LTE (or fixed 4G) products and services, and no other product from Cell C.

The Respondent noted that the Complainant selected LTE-advanced service and not the fixed-LTE product. The coverage map submitted shows that fixed-LTE is not available in the complainant's area. The Respondent also offered to provide the agent who assisted the Complainant a refresher training course on the different products and services, provided it obtains the details of the agent.

Application of the Code of Advertising Practice

The following clauses were 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.

Clause 4.2.1 of Section II of the Code deals states, *inter alia*, “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.”

This matter appears, on careful assessment, to be founded in a misunderstanding.

It would appear that:

- The Complainant understood himself to be in the market for LTE Advanced when he checked the advertising;
- Axxess only resells Cell C’s fixed LTE routers;
- The Directorate researched the router that was provided to the Complainant by Axxess, i.e. a Huawei B315 LTE router, and it appears *ex facie* that this router is indeed used for fixed-LTE services;
- The advertising in question differentiates between fixed LTE – which is not available in the Complainant’s area – and LTE Advanced – which is available in his area;
- The reason that the Complainant could not get LTE is because he was using a fixed LTE device in an area that is clearly advertised as not having fixed LTE facilities.
- The Complainant appears to have suffered from two incidents of bad service: being sold a device by Axxess that did not serve his area; and being given confusing advice from the call centre agent. However, neither of these service issues render the advertising misleading.

The Directorate has assessed the advertisement in question and notes that it communicates that the following products are available “2G, 3G, and LTE Advanced”. However, the “Fixed LTE” product that the device was compatible with is not available, and this is communicated clearly in the advertisement.

It is in this context that the Directorate finds that the communication in the advertisement is not misleading or in contravention of Clause 4.2.1 of the Code as alleged by the Complainant.