

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Duncan Gohl
Advertiser	MTN (Pty) Ltd
Consumer/Competitor	Consumer
File reference	129 – MTN – Duncan Gohl
Outcome	Dismiss
Date	2 April 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Duncan Gohl against the Respondent’s print advertising promoting its 50BG deal.

Description of the advertising

The advertisement states “Great deal.

50GB. R299

PMX24 on MTN.

BUSINESS Broadband LTE 30GB. 30GB Anytime Data.

*20GB Work Express.”

Complaint

The Complainant submitted that nowhere on the pamphlet does it mention that the Work Express data can only be used AFTER your 30GB is finished and then you can only connect between 10 am and 1pm. Despite numerous emails to the Respondent’s various business addresses, the Complainant did not receive an answer.

Response

The Respondent submitted that the complaint raises two issues and those are:

1. One can only use the Work Express” data between 10:00 and 13:00 and this fact is not disclosed in the advertising; and
2. There is no indication that the “Work Express” data would only be depleted once the “Anytime” data has been depleted.

The Advertiser identified the extract of the advertisement that the Complainant provided as coming from a full page advertisement in the Y’ello Trader booklet, and explained why this is the case.

In dealing with the dispute regarding the 10:00 – 13:00 aspect of the complaint, the Respondent submitted that time frame is clearly communicated in the Y’ello Trader in the form of an icon reflecting a person sitting at a desk facing an open laptop, with the words “**Work Express Data between 10:00 – 13:00**” printed in

bold, black lettering against a yellow background, making them impossible to miss.

While it is not immediately apparent why the Complainant chose to exclude this information from his complaint, it should be clear to the Directorate that the advertisement does not, in fact, omit this information as suggested by the Complainant.

In dealing with the depletion of the “Anytime” data dispute, the Respondent submitted that it is not true that that the Work Express data can only be used once one has depleted the “Anytime” data. The product was specifically created to allow business owners seamless internet connectivity. It affords subscribers a predetermined amount of “Anytime” data (in the Complainant’s instance 30GB), which is depleted as and when used. However, as a value-add, the Respondent allocates an additional “Work Express” portion of data (in the Complainant’s case 20GB) for use between 10:00 and 13:00. Put differently, before 10:00 customers deplete their regular “Anytime” data. At 10:00 customers are automatically and seamlessly configured to deplete their additional “Work Express” data. At 13:00 the process reverses, and customers again deplete their regular “Anytime” data. It is therefore untrue to allege that “...*the Work Express data can only be used AFTER your 30Gb is finished*...”.

The Respondent submitted a spreadsheet document to the Directorate reflecting various accounts, data depletion (both “Anytime” and “Work Express”) and billing times. Based on this information, the Respondent submitted that the Complainant was not forced to deplete his “Anytime” data first and only then allowed to deplete his Work Express data. These data allocation accounts run concurrently and are depleted as per the time-frames stipulated in the

advertisement (with a small margin of error when switching occurs between one another). In the absence of any further clarity from the Complainant, it would appear that his submissions are incorrect.

Application of the Code of Advertising Practice

The following clause was 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 provides that “*Misleading claims 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*”.

The Complainant argued that the advertising is misleading as it does not state that the Work Express data can only be used between 10:00 and 13:00 and that it can only be used once one has depleted their “Anytime” data.

The Respondent refuted the allegations on the basis that its advertising discloses this information clearly. The Respondent argued that the advertising must be considered in its entirety and not in piecemeal as the Complainant chose to crop-out certain section of the advertising.

The Directorate agrees with the Respondent that advertising should be assessed in whole and not in part. It is also correct that the information around the Work Express data is clearly communicated at the top of the full page advertisement, in a bold and legible manner.

The Directorate therefore finds that this aspect of the advertising is not misleading as alleged by the Complainant.

Regarding the depletion of the Anytime data before one can use the Work Express data, the information provided by the Respondent shows that indeed during 10:00 – 13:00 the billing is first allocated to the Work Express data, and before 10:00 and after 13:00 it is allocated to the Any Time data. It would therefore appear that the Complainant has misunderstood the billing in this regard. The Respondent provided the Directorate with its billing spreadsheet in demonstrating data allocations and the Directorate is satisfied that the Respondent indeed alternates data allocation in terms of its offering.

In light of the above, the Respondent's advertising is in not contravention of Clause 4.2.1 of Section II of the Code and therefore not misleading.