

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Mr. Imraan Cassim Patel
Advertiser	Mobile Telephone Network (Pty) Ltd
Consumer/Competitor	Consumer
File reference	108 – MTN – Imraan Cassim Patel
Outcome	Upheld
Date	25 March 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Mr Patel against MTN's brochure (February 2019 Y'ello Trader) that can be accessed on the following link:

<https://www.mtn.co.za/SiteCollectionDocuments/YelloTrader/918709%20MTN%20February%20Trader%20V9%20Final%20lo%20res.pdf>

Description of the advertising

The Brochure is for the month of February, and the front cover states the following:

“Double the love this month with MTN

Don't miss out on our

20GB once-off free
data and free MTN
Entertainment Pass
on selected contracts!”

The following appears on the bottom of each subsequent page:



Complaint

The Complainant submitted that he finds the MTN advertisement in the brochure regarding the “Entertainment Pass” misleading, as it is not stated that the pass is only valid for 1 month when you sign up for a contract. He believed that the “Entertainment Pass” was valid for the duration of contract.

Response

The Respondent denied all the Complainant’s allegations. It noted that Mr Patel did not provide much information in his complaint, but merely refers to “... the MTN adverts in their books and advert ...” and provided a URL to MTN’s February 2019 Y’ello Trader. It therefore submitted that in the absence of any more detail, MTN assumes that the Advertising Regulatory Board will be considering only its February 2019 Y’ello Trader, and has therefore responded accordingly, without any specific reference to any particular advertisement.

The Respondent also noted that Mr Cassim merely states, “It is assumed that this is valid for the duration of the contract” without giving any reasons why he believes reasonable people would make such an assumption. The Respondent explained that the Entertainment Pass product was launched as part of MTN’s 2018 Summer campaign, and effectively awards certain MyChoice Flexi customers either 5GB or 14GB data as a once-off gift. The Respondent clarified that the “Entertainment Pass” product is not a stand-alone product and cannot be purchased by any MTN customer. Furthermore, it was submitted that the “Entertainment Pass” is provided for free as an additional token of gratitude to customers

who opt to sign up for (or in some instances upgrade to) specific MyChoice Flexi contract plans.

The respondent submitted that whenever the Entertainment Pass add-on (token of gratitude) is included in the advertised contract, it is either contextualised as a 5GB pass or a 14GB pass in close proximity to the device advertised. This information appears in large, clear, and easy to understand graphics at the bottom of every page where an Entertainment Pass is included in the offer. It further submitted that the Entertainment Pass offering (when applicable to a particular contract) is clearly qualified, with overt indication of its size and finite nature.

Based on the information above, it argued that the hypothetical reasonable person would not be misled by the offering as alleged by the Complainant. The Respondent submitted that irrespective of the fact that it believes Mr Patel's complaint should be dismissed, it would like to offer Mr Patel a second Entertainment Pass of commensurate size.

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."

The Complainant is of the view that the advertisement is misleading as he believed that the "Entertainment Pass" will last for the duration of the contact and not 1 month. The Advertiser has clarified that this is a once off offer, valid for 30 days.

The Directorate agrees with the Advertiser that this is not the most clearly worded complaint, and it is unclear whether the Complainant expected the 14GB to last beyond one month; or expected to get another 14GB every month.

The Directorate will look at what the hypothetical reasonable person can expect from the offer, and what is in fact available, to make its decision.

In the first place, there are clearly TWO things on offer in the advertising:

- Free 20 GB anytime data
- Free 14GB Entertainment pass

The advertising clearly **separates** these two offers in the wording. The first reference, at the beginning of the brochure, says “. . .20GB once off free data and free MTN Entertainment pass. . .” (our emphasis). On the other pages, at the bottom, it reads “FREE 14 GB PASS. . . PLUS FREE 20GB.” (Our emphasis).

Having established that these are two separate offers, the hypothetical reasonable consumer would now look to establish what each offer involves.

In relation to the 20GB offer, it is absolutely clear that it is a once-off offer valid for one month. The front page states, “Double the love this month with MTN. Don’t miss out on our 20GB once-off free data and free MTN Entertainment Pass on selected contracts!” (Our Emphasis). This communication is further clarified inside the brochure, from the bottom of page two and in all the relevant pages of the brochure, the following is stated with regards to the 20GB offer, “. . . PLUS FREE 20GB ANYTIME DATA (once-off, valid for 30 days)” (Our emphasis).

It is therefore absolutely clear that the 20GB offer is once off, and valid for 30 days.

However, the 14GB Entertainment pass is less clearly explained. It explains that it includes a Free 5GB, 1GB for Facebook, 1 GB for Twitter, 1 GB for WhatsApp and 2GB for YouTube. It does not state that it is once off, and it does not state that it is only valid for 30 days. It is visually and verbally separated from the 20GB offer, which clearly states these conditions. The consumer therefore assumes that these conditions, so clearly stated in relation to the 20GB offer and so clearly absent from the 14GB Entertainment pass, must therefore not apply to the Entertainment Pass. It is perhaps ironic that by being so transparent in relation

to the 20GB, the Advertiser has created confusion in relation to the 14GB Entertainment Pass.

The hypothetical reasonable consumer might reasonably come to any one of the following conclusions:

1. That the conditions on the 20GB offer apply to the Entertainment Pass (as, apparently, is the case); or
2. That the 14GB Entertainment Pass is once-off but will last beyond 30 days, given that it is not qualified as only being valid for 30 days; or
3. That the 14GB Entertainment Pass will repeat monthly, but the specific data will expire each month, given that it is not qualified as being “once off”; or
4. That the 14GB Entertainment Pass will repeat monthly AND data will not expire but will accumulate, given that it is qualified neither as “once off” nor as “valid for 30 days”.

Given this, the advertising is ambiguous at best, and therefore in breach of Clause 4.2.1 of Section II.

Sanction

The Advertiser is required to:

- Stop disseminating the pamphlet and claim in its current format;
- The process of withdrawing the pamphlet must be actioned with immediate effect;
- The process of withdrawing the pamphlet must be completed within a reasonable time. In the event of a breach allegation, the Directorate will evaluate the steps that the Advertiser has taken, and evaluate whether they are reasonable in the circumstances.
- The claim in its current format may not be used again in the future.

The Advertiser is reminded that the decision applies to the claim in this format in whatever medium it appears, in terms of Clause 15.5 of the Procedural Guide.