

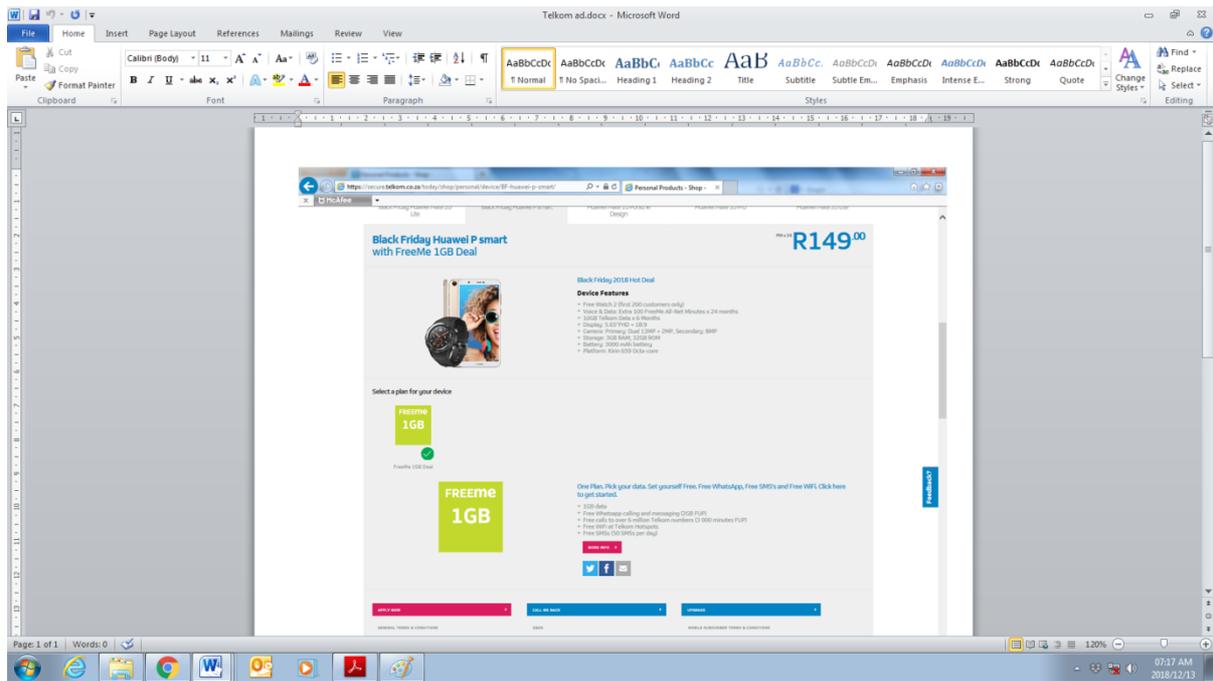
**DECISION OF THE ADVERTISING REGULATORY BOARD**

Complainant	Lucille Govender
Advertiser	Telkom SA SOC Ltd
Consumer/Competitor	Consumer
File reference	Telkom- Lucille Govender -03-12-18
Outcome	Upheld
Date	14 December 2018

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Lucille Govender against Telkom’s online Black Friday promotion of the Huawei P smart phone with a free watch.

**Description of the advertising**

The advertisement states, *inter alia*, “**Black Friday Huawei P smart with FreeMe 1GB Deal. Pm x24 R149.00**”. “**Black Friday 2018 Hot Deal**”, and below it shows device features.



At the bottom of the webpage under “Apply Now”, it states “General Terms and Conditions”, and under “Upgrade” it states “Mobile Subscribers terms and conditions”.

## Complaint

The Complainant submitted that she put in an online application to upgrade her current package at around 1:20 am on Black Friday for the Huawei P smart on Freeme 1GB. The deal specified that the first 200 customers would receive a watch. The Complainant further pointed out that her upgrade applications had been preapproved but no one contacted her for the upgrade. She was only contacted for her new contract and when she called the call centre she was told that they cannot find her application.

The Complainant further submitted that she was later was informed that the terms and conditions state that the promotional devices are only for new applications and not upgrades. The advertisement is ambiguous because there were 2 tabs advertising the Huawei P smart on FreeMe 1GB. One had a promotional watch and one did not but both had the option to upgrade. If upgrades did not qualify for the promotional watch, the upgrade tab should not have appeared here as it led her to believe that she qualified.

On the 26th November the Complainant was contacted by the Advertiser with regards to her upgrades and she was informed that upgrades did not qualify for the watch.

## Response

The Advertiser submitted that deals terms and conditions did indicate that only new sales qualified for free promotional accessories. In addition to the above, the Black Friday deals and accessories were available subject to stock availability. The promotion was for a limited period during 23-26 November 2018 and the advertisement was removed from the Advertiser's website on 00:00 on 23 November 2018. Terms and conditions were attached to the response.

## 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 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 consumer.

The question before the Directorate is whether the advertising misled consumers into believing that the free watch was available on contract upgrades. While the Advertiser raised the stock availability, this does not appear to be the reason that the Complainant did not get the free watch. It appears that even if stock was available, upgrades did not qualify for the offer.

When assessing the advertisement it states Black Friday Huawei P smart with FreeMe 1GB deal and it comes with a free watch for the first 200 customers. It is true that at the bottom of

the page there is a link to terms and conditions for Black Friday FreeMe deals, and that in those conditions Point 15 states, *inter alia*:

*“Black Friday deals are available to all consumer customers that order a new or renewal mobile contract from Telkom. Customers that want to do an in-life tariff migrations from an existing mobile contract, not eligible to renew, are excluded. The following customer eligibility conditions apply:*

- a. Only New sales will qualify for “free” promotional accessories;*
- b. Customers who are currently on a SIM only plan (not a 24-month contract with Telkom) should apply in-store at a Telkom retail store;*
- c. Customers who qualify for promotional Black Friday deals include:*
  - New Customers;*
  - Existing customers who apply for an additional mobile service;*
  - Existing customers who are eligible to renew their existing mobile contract”.*

However, the Directorate notes that:

- Material conditions to an offer must be communicated upfront;
- You cannot correct a misleading impression already created after the fact.

The advertisement gives three options after making the offer, including the free watch:

- To “Apply Now” – under which the above terms and conditions appear;
- To “Call me back”; and
- To “Upgrade” under which the “Mobile Subscriber Terms and Conditions” appear.

This creates two issues for the Directorate. In the first place, the Directorate agrees with the Complainant that the “upgrade” option should not have appeared with the offer if the offer was not valid for upgrades. The inclusion of the “upgrade” option creates a clear expectation that the offer is available on upgrade. In the second place, the layout implies that the “General

terms and conditions” apply to new applications, and the “Mobile Subscriber Terms and Conditions” apply to upgrades. It is therefore very likely that the hypothetical reasonable consumer seeking to upgrade would not understand that the General terms and conditions might have information pertaining to them.

**Given that the offer includes the free watch (subject to availability), includes an upgrade tab on that offer, and only clarifies the situation in the terms and conditions, which the upgrading customer might not even realise is applicable to them, the Directorate considers that the advertisement was misleading and in breach of Clause 4.2.1 of Section II.**

### **Sanctions**

The advertisement appeared for a limited time during the Black Friday week, and has been removed. There is therefore no need for the Advertiser to take further steps at this point.

The advertiser is urged to take this decision into account in preparing future advertising.