

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Tshepo Matseba
Advertiser	Afrihost (Pty) Ltd
Consumer/Competitor	Consumer
File reference	210 - Afrihost - Tshepo Matseba
Outcome	Dismissed
Date	4 June 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider the complaint lodged against Afrihost's website advertisement, as accessed at <https://www.afrihost.com/fibre/>.

Description of the advertising

The complainant lodged the complaint against the following web page:



Complaint

The Complainant submitted that the advertisement is misleading as it gives readers an impression that they will save up to R4000, and that they will not pay for installation and activation, and that the Wi-Fi router is included. The advertisement does not disclose that the costs of installation by Vumatel will in fact be paid by the consumer.

Furthermore, it was submitted that the disclaimer that informs clients about the installation costs is small and often covered by a pop-up message and readers can only see it by chance. The Complainant also argued that the word "setup" in this instance implies that installation is free.

Response

The Respondent pointed out that when a consumer views the homepage in question, the disclaimer message displays clearly when viewed in a standard desktop browser, and the same is true for its mobile browser view. The respondent submitted screenshot images of the desktop and cell phone browser as support. The Respondent submitted screenshots of the desktop browser which show that once a client has selected Vumatel or Vuma Aerial as

a Fibre Network Operator, the following notice will appear on-screen “Installation R1725 Payable to Vumatel³”. Furthermore, it was submitted that the footnote “3” adjacent to Payable to Vumatel is explained in the terms and conditions of this product offering: “Save up to R4000 Promotion 3 applicable to Vumatel and Vuma Aerial Signups on or after 6 March 2018 – The overall amount of up to R4000 does not cover the installation fee. The installation fee is directly payable to Vumatel.”

The Respondent submitted another screen-shot from its Order Forms section that appears once the client has clicked the “order now button”, which is the Terms and Conditions clearly visible at the bottom of the page right above the “next step” button, indicates that the promotion does not cover the installation fee charged by Vumatel.

Furthermore, the client will receive a pop-up notification before checking out, that discloses very clearly that the promotion does not cover installation fees charged by Vumatel. The client is requested to click “I understand, Continue” in order to proceed.

Once the notification is dismissed, the client will clearly note at the bottom of the Order Form a warning sign indicating the installation fee that is payable to Vumatel. After clicking the “checkout” button, the client is asked to enter a new or select an existing payment method. And then the client is faced with the final screen to place the order which informs the client of the installation fee and amount payable. In conclusion, the Respondent submitted that the above mention disclaimers and notifications are the necessary steps it took to ensure that clients are aware of, and understand that the Installation Fee applicable to Vumatel and Vuma Aerial signups is not covered by the promotion, and that the amount is payable directly to Vumatel.

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.”

There is no doubt in the Directorate’s mind, based on the Advertiser’s submissions and the Directorate’s own study of the Advertiser’s website, that by the time the consumer has placed the order for the service, they are aware of the charge for the Vumatel installation.

However, it is trite that one cannot clear up a misleading headline with explanations buried on another page or in terms and conditions. The question before the Directorate is therefore whether the initial advertising of “You don’t pay a single cent until your fibre is Installed and Activated” is misleading.

The Complainant has submitted the complaint against the webpage shown above, and that is therefore the only advertising before the Directorate at this time. This version of the advertising has a disclaimer. The complaint makes it clear that the Complainant did see the disclaimer on that page, as he states that it was partially hidden by the “bot” message. It is true that this disclaimer is sometimes partially obscured by the bot, but it is still partially visible at all times.

The Directorate assessed the website in question and noted that prospective clients are informed that “Save up to R4000 with Setup, Activation and Wi-Fi Router included* You don’t pay a single cent until your Fibre is installed and Activated”. The asterisk used on the promotion alerts consumers that material terms are applicable to the inclusions. As soon as you scroll down the webpage, immediately below where the promotional message is, there is a disclaimer written in white against a blue background, which states “*Excludes Vumatel and Vuma Aerial installation.”

In light of this, the Directorate believes that the hypothetical reasonable consumer will note from the asterisk that there are terms and conditions that are applicable to the promotion,

and the disclaimer referenced by the asterisk will immediately explain that the promotion does not cover Vumatel and Vuma Aerial installations.

In addition, the consumer is alerted of this material condition again before the checking out phase. The advertisement as a whole is also therefore clear that the promotion does not include installation for Vumatel and Vuma Aerial.

Based on the above the advertisement is not misleading or in contravention of Clause 4.2.1 of Section II of the Code.