

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Riaan Vermeulen
Advertiser	MWEB A Division of Internet Solutions Digital (Pty) Ltd
Consumer/Competitor	Consumer
File reference	MWeb- Riaan Vermeulen- 14-02-19
Outcome	Dismissed
Date	12 March 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Riaan Vermeulen against Mweb's street pole posters advertising fibre internet.

Description of the advertising

The street posters state, *inter alia*:

“TALK TO ME ABOUT FIBRE IN YOUR AREA, *priced from R489PM*. 021 001 0040.
AUTHORISED MWEB CHANNEL PARTNER. MWEB FIBRE. T&Cs APPLY.
PRICING AND PRODUCTS ARE SUBJECT TO AREA”.

Complaint

The Complainant submitted that he called the number and spoke to an Mweb representative intending to take up the offer. However, the offer did not apply to the fibre currently being rolled out in his area and the only offer available to him was a R600+ fibre connection. The Complainant pointed out that the posters are located specifically in a residential area where fibre is being rolled out currently and the intent seems to be to advertise fibre at R489pm for residents in this area.

In essence, the Complainant argued that the posters are misleading and should be removed.

Response

The Advertiser submitted that there are various fibre network providers and Internet Service Providers (“ISP”) such as MWeb that offer their services to consumers on this fibre network. Each fibre network provider has its own pricing which means that the price the ISP offers the product to the consumer will vary between fibre networks.

It was further argued that in some areas there may be more than one fibre network provider that has rolled out infrastructure, while other areas have only one fibre network provider. Therefore, more than one price list may be applicable in one area. The Advertiser pointed

out that it has created a generic poster and clearly indicated “priced from” and further the poster states “PRICING AND PRODUCTS ARE SUBJECT TO AREA” which indicate to the consumer that when he or she “talks to the agent” he will be advised that the applicable pricing based on the area in which he or she is located.

The Advertiser attached a screenshot of availability in the Complainant’s area.

Application of the Code of Advertising Practice

The following clauses were considered in this matter:

Misleading claims - Clause 4.2.1 of Section II

Non-availability of advertised products - Clause 31 of Section III

Decision

Having considered all the material before it, the Directorate of the ARB issues the following finding.

In terms of Clause 4.2.1 of Section II “advertisement should not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to misleading.

Clause 31 of Section III provides that “advertisements should not be submitted for publication unless the advertiser has reasonable grounds for believing that it can supply any demand likely to be created by the advertising.” It further provides that “in particular, no

attempt should be made to use the advertising of unavailable or non-existent products as a means of assessing likely public demand.”

The Complainant submitted that the posters are misleading because the Advertiser’s offer of R489 pm did not apply in his residential area though the posters are located there.

From the response, what becomes apparent is the following:

- Mweb is an internet service provider (ISP).
- It can offer its service on the fibre networks in a suburb, but the pricing will be affected by which fibre is provided in that area.
- Areas serviced by Openserve can get the offered deal of R489, but areas with only Vumatel start at R 579.
- Mweb uses the same advertising material country wide, and the advertised price is available in many areas.
- Some areas vary in their offerings from road to road, including, it would seem, the Complainant’s area.

When assessing the poster, we note that at the top it states, in bold letters, **“TALK TO ME ABOUT THE FIBRE IN YOUR AREA”**. This immediately sets up two ideas: that the consumer needs to consult with the Advertiser, and that area is a key consideration.

The poster further states *“priced from R489 PM”* (our emphasis). The hypothetical reasonable consumer would realise that the pricing shown on the poster indicates that offers starts from R489pm, but that R489 is not available to every consumer. The reference to “fibre in your area” immediately creates the possibility that it might depend on the area.

At the bottom of the poster it states **“T&Cs APPLY. PRICING AND PRODUCTS ARE SUBJECT TO AREA”**, emphasising that the pricing and availability depends on the area.

The Directorate has some sympathy with the Complainant’s view that if the prices are area specific, then different advertising material should be used in different areas. However, the reality is that the Complainant’s suburb has some parts which do have the R489 pricing available, and others that do not. The pricing in that area is therefore factually from R489.

Given the above, the Directorate of the ARB is of the opinion that the advertisement is not in contravention of Clause 31 of Section III as contemplated by the Complainant and it is not misleading in terms of Clause 4.2.1. of Section II.