

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Dr Christopher McCreanor
Advertiser	Vox Telecommunications (Pty) Ltd
Consumer/Competitor	Consumer
File reference	Vox Fibre – Dr Christopher McCreanor
Outcome	Dismissed
Date	3 September 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Dr McCreanor against advertising for Vox Fibre.

Description of the advertising

The claim in question is “Free Installation”. In some of the executions before the Directorate, there is an asterisk after the claim.

Complaint

In essence, the Complainant takes issue with the fact that the terms and conditions of the free installation are not disclosed in the advertising.

When questioned as to what specific terms the Complainant believed made the claim misleading, he drew attention to the provision that if the client cancels the contract during its term, they become liable for the installation fee. This would also occur if the client were

not happy with a unilateral change in terms by the Advertiser, and cancelled as a result thereof.

Response

The Advertiser confirmed that all material will be amended to include a reference to the terms and conditions.

Application of the Code of Advertising Practice

The following clauses were considered in this matter:

Misleading claims – Clause 4.2.1 of Section II

Headlines – Clause 4.2.6 of Section II

Decision

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

The Directorate will start by recording some basic principles about the use of terms and conditions, and will then move to the specific complaint at hand. It is also noted that service-related issues and business practices, such as making unilateral changes to the terms and conditions of a contract, are not advertising issues and therefore do not fall within the ARB's remit.

As a starting point, the Directorate accepts that in any offer which involves an ongoing service relationship, such as the provision of fibre services, there will be terms and conditions, often embodied in a contract. Whether or not the advertiser refers to those terms and conditions, generally or specifically, the reasonable consumer would expect and understand that they apply. This means that an advertisement that fails to refer to the conditions, whether specifically or generally, will not automatically be misleading.

On the other hand, the advertiser cannot regard the existence of terms and conditions as a catch all explanation for its claims. If a term of the contract exists that renders the claim in the advertising either incorrect or misleading, the essence of that term should be

communicated in the advertising. In that case, a vague reference to “T&Cs” will not clear up the confusion. The advertiser must amend or elucidate on the claim in the advertising in a manner that the consumer will understand what they are getting.

Turning now to how this applies to this matter.

The real question before the Directorate is this: Is the claim “free installation” misleading because a consumer who leaves the contract before it ends will pay the installation fee at that time?

The Directorate noted first of all that it does not appear to be disputed that the consumer does get the free installation. If the contract runs its term and there are no disputes, they will never pay for that installation. The offered “free” installation is available, and the claim is therefore not *prima facie* misleading.

The next question was therefore whether the fact that this benefit might be forfeited on early cancellation (within 12 months, according to the terms currently on the website) is so material as to require upfront disclosure in the advertising material.

In this regard, the Directorate noted that it is common practice in telecommunication contracts (and other contracts) that there are certain built in penalties for early exit. The hypothetical reasonable consumer would expect these to apply, and would consider them before entering the contract. The Directorate also took note that the period in question is one year, which is not an unreasonable amount of time to bind a consumer to a contract for this type of service. Finally, the Directorate considered that the Advertiser is only able to offer free installation by calculating what it expects to make on the contract. The analogy is the free handsets that telecommunication companies offer with fixed term contracts. It is therefore a reasonable and expected limitation.

Given all these considerations, the Directorate is satisfied that:

- the installation is indeed free;
- the condition of 12 months tie-in, or installation becomes payable, is not so unexpected or unusual or material as to warrant upfront disclosure.

The advertising is therefore not in breach of Clauses 4.2.1 or 4.2.6 of Section II of the Code.