

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Pieter Vergeer
Advertiser	Telkom SA SOC Limited
Consumer/Competitor	Consumer
File reference	Telkom - Pieter Vergeer
Outcome	Undertaking
Date	22 July 2020

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Pieter Vergeer against internet advertising for Telkom's Unlimited Home Lite uncapped internet service at:

<https://secure.telkom.co.za/today/campaign/dsl-revitalisation/>

Description of the advertising

There are a number of different offers, but in essence, the advertising looks like this.

4Mbps

**DSL UNLIMITEDhome Lite
(Uncapped)**

Includes WiFi router and
installation.

LOCKDOWN PROMO

R199 PM THEREAFTER **R329** PM

Price valid for first 6 months
on a 24 months contract

The advertising also contains links to the “FAQs” and “T&Cs”.

The FAQs stated, *inter alia*:

1. Who qualifies for the offers?

The New to Franchise (NTF) and existing customers that are on Openserve copper network coverage.

...

4. Can I migrate from the traditional DSL copper line to the Pure Connect DSL offering?

- *To the DSL Unlimited Home Premium bundles, yes (Voice and Internet).*
- *To the DSL Unlimited Home Lite, Yes (Only Internet, not voice)*

The Terms and Conditions stated, *inter alia*:

1. These promotional bundles will be available for new sales acquisitions and qualifying service migration and is limited to the Openserve Copper Network.

Complaint

The complainant submits that the advertising is misleading. The essence of the complaint is that “Current customers of the Unlimited Home Premium are not ‘allowed’ to migrate to the lite package, in contradiction to T&C's and FAQ's.”

Response

The advertiser responded as follows:

The Telkom Terms and Conditions for the COVID-19 DSL promotional bundles are not erroneous and are clear about which customers may be able to obtain the advertised services. The complainant was on an Unlimited Home DSL 4Meg package which means he does not qualify for the migration. The advertiser submits that they explained this to the consumer, who was mistaken in his interpretation of the qualifying criteria. The advertiser advised that it has updated its terms and conditions to be clearer and also offered the package to the complainant, as a one-off.

The complainant was given the opportunity to respond and advised that, although the offer was made for him to take up the advertised services, he was still of the view that the advertising was misleading, even after any amendment to the advertising had taken place.

To this, the advertiser responded, in essence, that the advertising was clear on who would qualify for migration and the once off offer to the complainant was simply in consideration of his “inconvenience.”

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

The Directorate will not address contractual or service issues between the parties and will only deal with the issue of whether the advertising in question contains any misleading claims.

The Directorate started its investigation with a consideration of the advertisement itself, and the context in which it appears.

The advertisement is for a 24-month contract, and the question the complaint presents is whether an existing Telkom customer, on another package, can expect to be able to migrate to the advertised package, absent a statement in the advertising that this can be done. In considering this, the Directorate drew an analogy with a cellular contract. If you are on Contract A, for 24 months, at a certain price, and you consequently see that there is Contract B with a better deal, can you expect to migrate from Contract A to Contract B? The Directorate felt not: you have signed up for Contract A, and you cannot simply rescind on that when a better deal appears. The same applies to the matter at hand. The hypothetical reasonable consumer cannot expect an automatic right of migration between packages, and as such, the advertising itself is not misleading.

The inquiry then becomes about the consumer’s next point of reference: the FAQs.

In the original FAQs it states:

1. Who qualifies for the offers?

The New to Franchise (NTF) and existing customers that are on Openserve copper network coverage.

2. How do I know if my area is in the Openserve copper network coverage?

Check your address on the following link: <https://secure.telkom.co.za/today/ucm/>

...

4. Can I migrate from the traditional DSL copper line to the Pure Connect DSL offering?

- To the DSL Unlimited Home Premium bundles, yes (Voice and Internet).
- To the DSL Unlimited Home Lite, Yes (Only Internet, not voice)

The product that the complainant was interested in, was the DSL Unlimited Home Lite, and these FAQs give the impression that provided he was on Openserve copper network cable, he would qualify for the offer.

However, the Advertiser undertook to change the advertising to the following:

1. Who qualifies for the offers?

The New to Franchise (NTF) and existing customers that are on Openserve copper network coverage.

2. How do I know if my area is in the Openserve copper network coverage?

Check your address on the following link: <https://secure.telkom.co.za/today/ucm/>

...

6. Can I migrate from the traditional DSL copper line to the Pure Connect DSL offering?

- To the DSL Home Unlimited Premium bundles, yes.
- To the DSL Unlimited Home Lite, No.

The Directorate notes that the separation of point 1 and point 6 may cause some confusion. Point 1 implies that any customer on the Openserve copper network can migrate to the new packages. It is only when you reach point 6 that you discover that you cannot migrate to the DSL Unlimited Home Lite package. It would most certainly have been clearer if point 1 and 6 were either combined, or followed immediately on from each other.

However, given that the customer cannot automatically expect the right to migrate packages, and given that point 6 is absolutely unambiguously worded, the Directorate accepts that the new FAQs address the issue raised by the Complainant.

The undertaking to change the FAQs is therefore accepted.