

DECISION OF THE ADVERTISING REGULATORY BOARD

Complainant	Liaan Koekemoer
Advertiser	MetroFibre Networx Pty Ltd
Consumer/Competitor	Consumer
File references	410 – MetroFibre – Liaan Koekemoer.
Outcome	Upheld
Date	3 October 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Liaan Koekemoer against a MetroFibre Networx sign/poster promoting its fibre network that is placed on the corner of Sefako Makgatho Drive and Marija Street, Sinoville in Pretoria.

Description of the advertising

The complainant submitted the following image of the advertisement:



Complaint

In essence the Complainant is of the opinion that the advertiser is promoting its services with a false advertisement as he was informed that the promised fibre is not yet available in his area, Sinoville, as it is still in project phase and the roll-out is planned for 2020.

Response

The Respondent submitted that

- It is not a member of the ARB and does not submit to its jurisdiction; nevertheless, it is grateful for the opportunity to respond to the complaint.

- It provides fibre infrastructure, connectivity and broadband internet services in South Africa and its fixed fibre network covers more than 1 500 km in the greater Gauteng metropolis.
- It can confirm that its fibre is presently located in the area referred to in the complaint. It can also confirm that the sign photographed by the complainant, situated at corner Marija Street and Sefako Makgatho Drive in Sinoville, Pretoria, is situated on its current live and existing network and its (the advertiser) network is reaching into the area as a whole and there is an existing residence, complex and business connections that are live in the area at this time.
- It however takes time to get the fibre into every street in every precinct which is dependent on permissions from the local municipality. The first step is to connect the area (as the advertiser has done), thereafter it will focus on delivering fibre to each street on a planned roll-out basis.
- Where an area has another fibre infrastructure provider, it may not have municipal approval to trench in that area.
- It expects to complete the entire precinct by end December 2019. Should the complainant wish to have MetroFibre in its street or complex, it can apply for consideration.

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.

Jurisdiction

The Directorate notes that the Advertiser has stated that it does not submit to the jurisdiction of the ARB but has co-operated fully in supplying a response.

For the purpose of clarity, the Directorate notes that Clause 3.3 of the Memorandum of Incorporation of the ARB states:

“3.3 *The Company has no jurisdiction over any person or entity who is not a member and may not, in the absence of a submission to its jurisdiction, require non-members to participate in its processes, issue any instruction, order or ruling against the non-member or sanction it. However, the Company may consider and issue a ruling to its members (which is not binding on non-members) regarding any advertisement regardless of by whom it is published to determine, on behalf of its members, whether its members should accept any advertisement before it is published or should withdraw any advertisement if it has been published.*

The matter will therefore be considered for the guidance of the members of the ARB. It remains the Advertiser’s prerogative whether to submit itself to the decision.

Merits

The complainant is of the opinion that the advertisement is misleading as he was informed that the promised Fibre is not yet available in his area, Sinoville, and the plan is for it to be available in 2020.

The aim of Clause 31 of Section III is to ensure that advertisements are not published unless the advertiser has reasonable grounds for believing that it can supply any demand likely to be created by the advertising. 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. Clause 4.2.1 of Section II also cautions advertisers that advertisements should not contain any statement or visual presentation, which directly or by omission, ambiguity or exaggerated claim, is likely to mislead the consumer about the advertised product.

The question before the Directorate in this matter is whether the advertising in question would lead a hypothetical reasonable consumer to expect the service in the indicated area. The advertiser has confirmed that its fibre is presently located in the area referred to in the complaint, but it takes time to get the fibre into every street, which is dependent on permissions from the local municipality. The Directorate’s takeout from this statement is

that although the advertised fibre is available within the area, there are some sections or streets where it is not yet available.

The claim “METROFIBRE IS HERE!” is phrased, and its present location, creates an impression that the fibre that is being promoted is available for all residences in that area, including for those living in residences situated around the streets where the sign is situated. However, the reality is that there are some areas where the fibre is not yet available due to logistical reasons, as stated by the advertiser. A disclaimer, change of wording or an explanation accompanying the claim “METROFIBRE IS HERE!” in the advertisement placed at the corner of Marija Street and Sefako Makgatho Drive in Sinoville, Pretoria could have easily clarified that although the advertiser’s fibre is presently located in the area, there are some streets where it is still not yet available.

Given the above, the Directorate finds that that the claim “METROFIBRE IS HERE!” within the advertisement, at its present location (corner Marija Street and Sefako Makgatho Drive in Sinoville, Pretoria) creates a misleading impression that the advertiser’s fibre is available for all residences in the complainant’s street whereas this is not true.

The claim “METROFIBRE IS HERE!” at the said location is therefore in contravention of Clauses 4.2.1 of Section II and 31 of Section III of the Code.

Sanctions

The Advertiser is requested to:

1. Withdraw the claim “METROFIBRE IS HERE!” in its current format, at the current location;
2. The process of withdrawing the claim “METROFIBRE IS HERE!” in its current format, at the current location should be actioned with immediate effect;
3. The claim “METROFIBRE IS HERE!” should not be used again in it’s in its current format, at the current location.

Members of the ARB are advised not to accept the advertising in its current format.