

Decision of the ADVERTISING REGULATORY BOARD

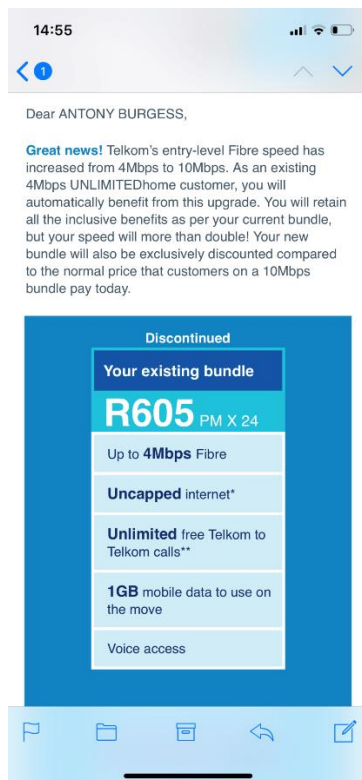
Complainant	Antony Burgess
Advertiser	Telkom SA SOC Limited
Consumer/Competitor	Consumer
File reference	Telkom Uncapped Internet – Antony Burgess
Outcome	Upheld
Date	20 May 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint by Antony Burgess against Telkom’s website advertising promoting its “UNLIMITED home” product.

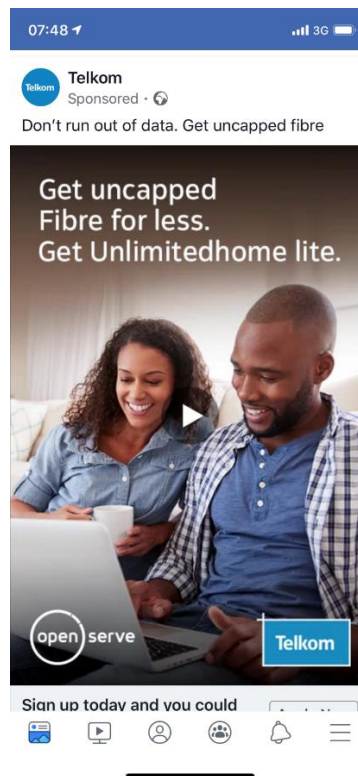
Description of the advertising

The advertising in question is:

Ad 1



Ad 2



Complaint

In essence, the Complainant submitted that the advertising is misleading the public by the use of "Uncapped" and "Unlimited". The Complainant was advised that the line is throttled when one reaches 50% of usage, and that every client is throttled on the 20th of the month in terms of the Fair Use Policy.

Response

The Advertiser submitted that:

- The term “Uncapped” is the telecoms and industry naming convention for deals which are not soft capped .
- Telkom’s Uncapped offers come with a fair useage policy “ FUP” which is standard across all service providers.
- Telkom has further expanded on the Uncapped deals by naming them “UnlimitedHome”. Any customer viewing these deals will be directed to the terms and conditions associated with the offering and the FUP policy.
- This is also contracted between Telkom and its customer at the time of application for Telkom’s products and or services .

In an earlier response, the Advertiser confirmed that UNLIMITEDhome is a naming convention of the product. It is of the view that the Complainant needs to refer to the terms and conditions for the relevant offering, containing all the relevant information for his understanding of the application of the terms “Uncapped and Unlimited”, in relation to the product, which are highlighted on the Telkom product page and website for ease of reference at this link :

<https://secure.telkom.co.za/today/shop/plan/Homeunlimited-new-2017/>

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

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

The Complainant is of the view that the advertising is misleading as the Advertiser uses the words “Uncapped” and “Unlimited” internet when it throttles internet access at certain times. The Advertiser argued that “Uncapped” and “Unlimited” phrases are standard industry terms relating to certain internet packages. These packages are accompanied by “Fair Usage Policy” which forms part of the contract between the Advertiser and its customers. The Advertiser chose to name the uncapped internet access “Unlimitedhome”.

The issue of “Uncapped” and “Unlimited” was dealt with by the Directorate of the Advertising Standards Authority of South Africa and on appeals on numerous occasions. In the matter of Telkom Mobile Unlimited / C Faulkner / 2016-3203F (23 August 2016), the Advertising Standards Committee held that *“The committee considered all the documents filed and representations made. The ASA directorate has dealt with a number of cases featuring claims of unlimited and uncapped data and has accepted that in the case of uncapped products that some limitations will apply particularly throttling of speed of delivery of data. In the case of unlimited claims it is generally accepted that there should be no limitation. It is clear from the documentation and evidence provided by the appellant that limitations apply in respect of speed in which data is delivered and certain services particularly those using high bandwidth are not usable in an uninterrupted way. To claim a product is completely unlimited while there are inherent limitations is misleading.”*

The Directorate of the ARB notes that the MOI of the ARB states:

The members of the Company declare that:

3.2.1 They regard themselves as bound by, and hereby adopt as precedent, the principles of the decision-making organs of the Advertising Standards

Authority of South Africa (1995/000784/08), as at the date that the aforementioned ceased to trade; and

3.2.2 All existing, binding decisions of the decision-making organs of the Advertising Standards Authority of South Africa (1995/000784/08) will continue in force and effect and will be given effect to by the Company.

The Directorate of the ARB must therefore not deviate from a well-established principle of the ASA decision making bodies without good cause.

The Directorate of the ARB notes that when used in the same piece of advertising, the words “Uncapped” and “Unlimited” would be expected to have different implications – if this was not the case, only one term would be used.

The Complainant has placed two pieces of advertising before the Directorate, and the Directorate has done some further research into the Advertiser’s advertising conventions for these products. It appears that there are essentially two ways that the advertiser advertises its offerings.

Both conventions use the word “uncapped”. The Directorate is guided by the decisions of the ASA that accept that “uncapped” does not mean that the use will not be slowed down by a Fair Use Policy. In most examples (although not in Ad 2) the word “uncapped” is also asterisked, drawing the consumers’ attention to the fact that limitations apply.

The question is really whether the inclusion of the product name “Unlimited” leads the consumer to expect more. As already stated, the fact that a second word is used to describe the offering implies something over and above “uncapped”.

In advertising such as the example labelled “Ad 1” above, the word “Unlimited” is clearly explained as applying to Telkom to Telkom calls. Another example is at <https://secure.telkom.co.za/today/shop/home/plan/fibre-uncapped-internet/> . In these cases, the consumer would clearly understand:

- The internet is uncapped, which means that you can use as much as you need, subject to the Fair Use Policy.
- The calls are Unlimited, Telkom to Telkom.

These examples are therefore not misleading.

However, in the type of advertising represented by Ad 2 and also found, for example, at <https://secure.telkom.co.za/today/shop/home/plan/unlimited-home-lite-fibre-10Mbps-planvariation/> , both words are used but the word “Unlimited” is not explained and there is no reference to calls. In these examples. The word “Unlimited” appears to relate to the only feature discussed in the advertising – internet usage. It is in this context that it becomes confusing, and the consumer would expect that it means something over and above “uncapped”.

It is indeed clear from the Advertiser’s ‘Fair Usage Policy’ chart that throttling is implemented on uncapped services. However, there is nothing on the chart that deals with unlimited usage. In accordance with the principle established on the Faulkner Ruling, the Advertiser is permitted to throttle the service when the user reaches a certain threshold in relation to uncapped access. However, the Advertiser may not throttle the service where it claimed that it provides unlimited internet access.

In the advertising represented by examples like Ad 2, the Advertiser has implied that it provides “unlimited” internet access and the impression is created that the service is something over and above uncapped internet.

In line with the above principle, the Directorate finds that the advertising which lacks an explanation as to the words “unlimited” is ambiguous and therefore misleading and in breach of Clause 4.2.1 of Section II.

Sanctions

The Advertiser is instructed to:

- Amend its advertising in lines with the decision set out herein;
- To do so within the deadlines set out in Clause 15.3 of the Procedural Guide, which in the case of websites and internet advertising is two weeks;
- To begin this process of amendment immediately.