

## Decision of the ADVERTISING REGULATORY BOARD

Complainant	Francois Zietsman
Advertiser	Axxess DSL (PTY) LTD
Consumer/Competitor	Consumer
File reference	Axxess – Francois Zietsman
Outcome	Upheld
Date	3 September 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint by Francois Zietsman against the Advertiser’s website advertising promoting “Cell-C LTE-A with Free Router and FREE DELIVERY up to R169” for June / July 2019.

**Description of the advertising**

The website screenshot is as follows:

## Step 2: Select your hardware

The screenshot displays three hardware selection options under the heading "Step 2: Select your hardware".

- Option 1 (Left):** "SIM Only (Use your own router)". It features a "PROMOTION" banner, "GET THE ACTIVATION MONTH FREE!", and "FREE SIM DELIVERY VALUED UP TO R169". The "Once-off Hardware Price" is R0. It notes "You can use LTE / LTE-A compatible devices" and includes a "Click here to view" link.
- Option 2 (Center, highlighted with a red border):** "Huawei LTE Router Model: B315". It features a "PROMOTION" banner, a "FREE LIMITED STOCK!" banner, and "SAVE R1799". It also offers "FREE DELIVERY VALUED UP TO R169" and a "Once-off Hardware Price" of R0 (with a crossed-out R1799). It lists features: "WiFi 2.4GHz", "Up to 50Mbps", and "Up to 32 devices". A "View device information" link is at the bottom.
- Option 3 (Right):** "Huawei LTE-A Router Model: B618". It features a "PROMOTION" banner, "50% OFF SAVE R1249", and "FREE SIM DELIVERY VALUED UP TO R169". The "Once-off Hardware Price" is R1250 (with a crossed-out R2499). It lists features: "WiFi 2.4 & 5GHz", "Up to 50Mbps", and "Up to 64 devices". A "View device information" link is at the bottom.

## Complaint

The Complainant submitted that he feels that the advertising of FREE DELIVERY (in capital letters) is misleading and false because he was charged R102 for delivery. The advertising says FREE DELIVERY up to R169 and he feels the Advertiser should have mentioned in the advertising that delivery is normally R271, and they will give a R169 discount.

When he complained on the Advertiser's Facebook Messenger, the Advertiser said that it covered courier fees up to R169, and the Complainant paid the difference of R102. The Complainant submitted that the advertising states nothing about normal delivery fees and that the client must pay delivery fees above R169. In other words, the Advertiser's normal courier cost would have been R271, which is not mentioned in the advertising. The Complainant also submitted that charging R271 for courier delivery in South Africa is a rip-off, as he does a lot of online shopping and never saw any company charge R271 delivery fee.

## Response

The Advertiser submitted that the Complainant has provided proof in his screenshots that the Advertiser informs the purchaser that there is a limit to the amount covered for the

delivery of orders. Before the purchaser could add his purchase to his cart and enter his address, the word FREE is marked with an asterisk that refers to applicable terms and conditions. The Promotions Terms and Conditions state that the delivery is covered to a maximum of R169.00.

In support of its submission, the Advertiser replicated the checkout process and entered the Complainant's delivery address as provided for the purchase in question, and this exercise clearly displayed the delivery cost before the purchase could be completed. A screenshot in support of this submission was provided to the Directorate.

A RICA delivery, which is a delivery that requires RICA verification to be performed when a sim card is being delivered, is a premium delivery and is charged as such.

Based on the above, the Advertiser argued that its advertising is not misleading as it clearly stated the limit of the free delivery; the delivery fee was clearly visible during the completion of the purchase; it is clearly stated in the Promotions Terms and Conditions that the delivery is covered to a maximum of R169.00; and the Advertiser covered all requirements in terms of making the client aware of the limitations of the free delivery, and not attempted to mislead the purchaser.

## Application of the Code of Advertising Practice

The following clause was considered in this matter:

Misleading claims - Clause 4.2.1 of Section II

Use of the word "free" - Clause 4.4 of Section II

## Decision

Clause 4.2.1 of Section II of the Code states: *"Advertisements should not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer"*.

Clause 4.4.1 of Section II of the Code provides that *"products should not be described as "free" where there is any cost to the consumer, other than the actual cost of any delivery, freight or postage. Where such costs are payable by the consumer, a clear statement that this is the case should be made in the advertisement."*

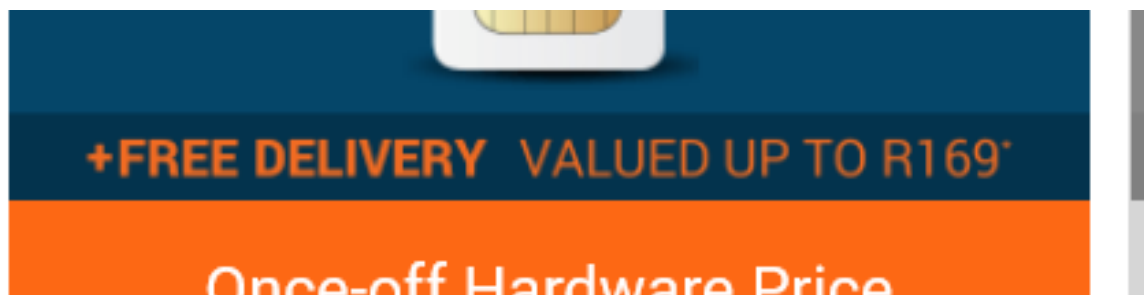
From the material and submissions by both parties, it appears to be common cause that the delivery is free up to R169.00.

On the material before the Directorate, the claim of “free” delivery appears in several places. On the original advertisement submitted by the Complainant and cited above, it states “Free delivery. Valued up to R169”. However, other material submitted shows a claim of “free” delivery without the disclaimer. For its own clarity, the Directorate looked at the Advertiser’s website as it currently appears. It may not be exactly the consumer experience the Complainant had, but the visuals appear consistent.

The first reference to the free delivery is this:



The user then scrolls down to find a visual similar to the one originally submitted:



Then further down the page is:

20GB Cell C Fixed LTE Combo (Pro rata discount applied)	<b>R15</b>
Once-off Delivery Price	<b>Free*</b>
Monthly Price	<b>R219</b>

According to the evidence supplied by the Advertiser in simulating the Complainant's purchasing order, the actual delivery costs (the excess amount) is disclosed when the address of the Complainant is entered.

Clause 4.4.1 of Section II of the Code provides that *“products should not be described as “free” where there is any cost to the consumer, other than the actual cost of any delivery, freight or postage. Where such costs are payable by the consumer, a clear statement that this is the case should be made in the advertisement.”* (our emphasis)

This clause usually applies to when the item is free, and delivery must be disclosed. In this case, it is the delivery itself that is free. However, the principle remains sound. If there is a cost associated in getting a free offering, this must be disclosed.

The question before the Directorate is whether the advertising discloses the delivery costs payable by the Complainant as contemplated by the Code. The Directorate accepts that the delivery cost may vary depending on the area that the consumer lives, so it is difficult for the Advertiser to disclose the total costs upfront.

The Directorate is also unclear whether the delivery is ever actually free, or if there will always be an extra cost. However, there is currently nothing before the Directorate to suggest that it is impossible to get the free delivery, so the Directorate will accept that there are certain consumers who can get this free delivery.

Given this, the Directorate is satisfied that the Advertiser can claim “free” delivery provided that the limitation of R169 is clearly communicated.

Turning to the advertising, the Directorate notes that the very first exposure to the offering does not disclose the limitation. This is the hook into the consumer exploring the deal, and any subsequent communication simply serves to clear up a misleading impression already created. In addition, the second communication, which does clarify the limitation, shows how easily it can be communicated.

**The first communication as set out above is therefore misleading and in breach of Clause 4.2.1 and Clause 4.4.1 of Section II.**

The second communication clearly sets out the limitation. While the Directorate understands that the consumer was upset and surprised by exactly how expensive his

ultimate delivery was, this is not an issue associated with the claim. The claim offered him “Free Delivery. Valued up to R169”. That is, indeed, what he got.

**This communication is therefore acceptable.**

The third communication is after the first two, and indicated “Free\*” as the delivery price. Had the initial communications both been clear, the asterisk next to the use of the word “Free” would have been sufficient to remind the consumer that there is a limitation. The third communication is therefore not per se problematic; but in the context of the misleading first communication, is ambiguous. The Directorate also notes, again, that clarifying this claim is not difficult.

**In the circumstances, the Directorate finds that the advertising as a whole is in contravention of Clause 4.4.1 of Section II of the Code and therefore misleading in terms of Clause 4.2.1 of Section II of the Code.**

## Sanction

The Advertiser is requested to amend this advertising in line with this decision within the deadlines set out in Clause 15.3 of the Procedural Guide.

In the case of internet advertising, this deadline is set as “two weeks or as determined otherwise by the [ARB]”. The Directorate is of the opinion that this two week allowance is outdated in the context of internet advertising and imposes a deadline of one week from receipt of this decision, with the Advertiser being required to show, if challenged, that they took immediate steps on receipt of this decision.