

## Decision of the ADVERTISING REGULATORY BOARD

Complainant	Mr. Kingston Cuthbert
Advertiser	Axxess (Pty) Ltd
Consumer/Competitor	Consumer
File reference	504 - Axxess – Kingston Cuthbert
Outcome	Dismissed
Date	12 November 2019

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint against an Axxess pamphlet that was delivered to the Complainant's letterbox.

### Description of the advertising

This is the pamphlet in question:

## Complaint

In essence, the Complainant submits that the advertised offer for R399 per month is not available in his area, only the more expensive offers. By advertising in his area, directly to his address, they are misleading consumers as to availability of the advertised offers.

## Response

The Respondent denied all allegations and submitted that the pamphlet drops are for targeted areas where fibre is available as communicated by its Fibre Providers, and it is simply a reseller of their services. Therefore, certain fibre installers are available in certain areas. The Respondent does not have control over the coverage for fibre at individual addresses. It explained that the flyer drops are to entire areas and not to a targeted individual address and it would not be reasonable for the Respondent to verify coverage per individual address and only provide flyers to that address.

The pamphlet in question quoted a starting pricing for fibre services, but the clients may be quoted a different price when they contact Axxess, and this depends on the available fibre services at specific home addresses. The advertised offer for “R399 p/m” is for Openserve fibre, and if it is not live in a certain area, customers will not be able to utilize them. The Respondent apologised to the Complainant if he felt that he was not able to speak to someone who could explain this to him in a manner that was satisfactory to him. The Respondent did inform the Complainant of other services that were available at his address.

## Application of the Code of Advertising Practice

The following Clauses were considered in this matter:

- Misleading claims – Clause 4.2.1 of Section II
- Up to ...” and “from ...” claims – Clause 4.5 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.

Clause 4.2.1 of Section II of the Code states, *inter alia*, that advertisements should not contain any statement or visual presentation which, directly or by implication, omission, ambiguity, inaccuracy, exaggeration claim or otherwise, is likely to mislead the consumer.

Clause 4.5 of Section II of the Code states, *inter alia*, “Claims, whether as to prices or performance, which use formulas such as ‘up to’ or ‘prices from’ are not acceptable where there is a likelihood of the consumer being misled as to the availability of the benefits offered.

Clause 31 of Section III stipulates that advertisements should not be submitted for publication unless the advertiser has reasonable grounds for believing that it can supply any demand likely to be created by the advertising.

The facts in this matter appear to be as follows:

- The advertised starting price of R399 is only available if you have Openserve as your fibre provider;
- The Complainant is not in an area that has Openserve as its fibre provider;
- The Advertiser was able to provide the Complainant with the advertised service, just not at the R399 price.

The Directorate starts by noting that the advertisement could certainly be clearer. Given that pamphlets, by their nature, are distributed widely and might also end up with consumers who would not be expected to see them, the offer could easily have been clarified. This could have been done by way of a disclaimer on the R399 price (for example, \*Only available if Openserve fibre is available in your area) or a general disclaimer (for example, \*Prices vary according to fibre provider). Another solution would have been to list the prices per fibre provider. There are many ways that this advertisement could have been framed that would have avoided the frustration experienced by the Complainant.

However, the job of the Directorate is not to ask whether the advertising was the best that it could have been, but to ask whether it was misleading as to the availability of the service at the advertised price.

To this end, the Directorate notes:

- As noted, pamphlets are by their nature designed for widespread distribution. This is different from, for example, a billboard in a particular area;
- The pricing clearly states “starting from” and the lowest price is available to consumers who have Openserve;
- The Directorate has considered the distribution maps for George for Openserve services and notes that:
  - It is available in two large areas of George;
  - One of these areas is very close to where the Complainant lives.
- The Advertiser is able to provide the Complainant with the advertised service, just not at the starting price, for reasons that are beyond its control;
- Consumers are slowly becoming familiar with the structure of fibre deals, where two providers are involved, and the Internet Service Provider pricing is influenced by the fibre provider.

**Given the above, the advertisement is not in contravention of Clauses 4.2.1 or 4.5 of Section II or Clause 31 of Section III of the Code.**