

Decision of the ADVERTISING REGULATORY BOARD

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| Complainant | Michele Sohn |
| Advertiser | Samsung Electronics South Africa (Pty) Ltd |
| Consumer/Competitor | Consumer |
| File reference | 65 – Samsung – Michele Sohn – 14 – 01 -19 |
| Outcome | Upheld |
| Date | 26 February 2019 |

The Directorate of the Advertising Regulatory Board has been called upon to consider a complaint lodged by Michele Sohn against the online advertising for the Advertiser’s Samsung Care+.

Description of the advertising

The advertisement state, *inter alia*, that **“With Samsung Care+ you qualify for two screen repairs over 24 months, limited to 1 repair every 12 months.**

- Standard warranty is based on two years from POP (Physical damage is not considered as standard warranty).
- Based on one year (Screen) every 12 months - two year warranty on repair work cannot apply

- Warranty does not apply on physical damage (in the event of the second repair under care+ - no warranty shall apply unless through request not related to physical and within 24 months from purchase.

APPLY NOW”

Complaint

The Complainant submitted that the offer provides for up to two screen replacements during 24 months. It implies that these replacements are free; however, there is a co-payment of R1000. This is buried in the terms and conditions. With a R1000 excess for the front and R300 for the back, in reality the offer is a discount, and it is not free at all.

Response

The Advertiser submitted that it is not a member of the Advertising Regulatory Board. As such the ARB does not have jurisdiction to require it to participate in its processes, issue any instruction, order or ruling against it or sanction it.

Notwithstanding, the above, as a gesture of goodwill, it confirms that it has investigated the complaint and responds thereto as follows:

1. It denies the Complainant's allegation and in support of its denial, records as follows:
 - 1.1 the photograph attached to the complaint is not the complete screenshot of the advertisement;
 - 1.2 the screenshot contains merely one sixth of the complete advertisement and it is not a true reflection of how the advertisement appears on its website. The relevant URL containing the full advertisement was provided to the Directorate;
 - 1.3 It is clear from the content of the advertisement that there is a cost attached to the Samsung Care+ offer (i.e a monthly fee of R69.99 or a once-off discounted fee of R1 260.00);

1.4 A copy of the terms and conditions applicable to the Samsung Care+ offer to the response.

In light of the above, the Advertiser submitted that the advertisement is not misleading as it does 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.

As such, it is not in contravention of Clause 4.2 or any other Clause of the Code of Advertising Practice.

Application of the Code of Advertising Practice

In light of the complaint, the following clause was considered:

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.

Jurisdiction

The Advertiser has submitted that it is not a member of the ARB and is not bound by its decisions.

The Memorandum of Incorporation of the Advertising Regulatory Board states:

“3.3 *The Company has no jurisdiction over any person or entity who is not a member of the ASA and that the ASA 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.*”

In other words, if the advertiser is not a member and does not submit to the jurisdiction of the ARB, the ARB will consider and rule on the advertising for the guidance of its ARB’s members. The ARB will, however, rule on whatever is before it when making a decision for guidance of its members. This ruling will be binding only on ARB members and on broadcasters in terms of the Electronic Communications Act.

The ARB will therefore proceed to consider this matter for the guidance of its members.

Merits

Clause 4.2.1 of Section II of the Code provides that *“Misleading claims 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”.

The Complainant argued that the advertising is misleading as the offer is not a warranty but rather a discounted offer. The Respondent argued that it disclosed the applicable fees or costs in the advertisement and therefore the consumer is not misled in any manner.

The Directorate accessed the full advertisement at <https://www.samsung.com/za/mobile/samsung-care-plus/> and agrees with the Respondent that the image supplied by the Complainant is only a sixth part of the entire advertisement. The first part of the full advertisement contains the following wording:

“SAMSUNG

CARE+

EXPERT CARE. From people who made it.”

“Choose Samsung Care+

Don’t worry about a cracked screen. With Samsung Care+, we have your new Galaxy smart phone covered for those unforeseen accidental damages.

How much? Samsung Care+ will cost you a minimal monthly fee of R69.99 or a once-off discounted fee of R1 260.00 for 24 months giving you 6 months free”. (Our emphasis)

Further down, after the call to action in the form of “Apply Now’ links, the advertisement has a link to “Terms and Conditions Apply”. If one accesses these, in clause 7 (**Repair Fee**) of the Terms and Conditions, it is states:

“(a) You will pay a R1 000 Repair Fee for each front glass claim, and You will pay a R300 Repair Fee for each back glass claim”.

The Complainant does not take issue with the fact that the warranty costs R69,99 a month or R1260 upfront. This, as pointed out by the Advertiser, is clearly communicated upfront. What the Complainant takes issue with is that having paid the warranty amount, there is still a substantial excess payable on the repairs.

According to www.businessdictionary.com, *“a warranty describes the conditions under, and period during which the producer or vendor will repair, replace, or other compensate for, the defective item **without cost to the buyer or user**”*. (Our emphasis).

At www.oxforddictionaries.com, the definition of “warranty” is *“A written guarantee, issued to the purchaser of an article by its manufacturer, promising to repair or replace it if necessary within a specified period of time.”* And the Code of Advertising Practice itself, at Clause 15.1 of Section II, states that the term warranty implies, inter alia, a formal written undertaking to reimburse a purchaser for the cost of the product itself, or the cost of having it put right in the event of defects becoming apparent.

The Directorate therefore agrees with the Complainant that on reading the offer in the main body copy of the advertising, the hypothetical reasonable consumer would understand that:

- You pay R69,99 a month / R1260 upfront;
- In exchange, you have a warranty against screen repairs (with certain stated exceptions) for the next 24 months;
- There would be no further costs if the conditions for the warranty were met.

It is also material, although not decisive, that the term that is used is “warranty” which is associated with complete cover, and not “insurance” which is associated with excesses. The hypothetical reasonable consumer would therefore be unlikely to check the terms and conditions for excesses, as nothing in the body copy indicates the likely presence of an excess.

It is also material that the Advertiser has incorporated a number of other conditions into the main body copy, such as the limitation with regards to physical damage. The consumer reading the advertising would therefore expect that all material limitations on the warranty were communicated in the body copy.

From the above, it is clear that this is not a “warranty” as advertised as there are substantial costs over and above the cost of the warranty, which are not clarified or referred to in the body copy of the advertisement.

In light of the above, the Respondent's advertising is misleading and in contravention of Clause 4.2.1 of Section II of the Code.

Sanction

The Advertiser is requested to:

- Withdraw the advertising in its current format;
- The process of withdrawing the advertising should be actioned with immediate effect;
- The process of withdrawing the advertising should be completed within the deadlines stipulated in Clause 15.3 of the Procedural Guide; and
- The advertising should not be used again in its current format in future.

ARB members are advised not accept or publish the Advertiser's advertising in its current format.