

Decision of the ADVERTISING REGULATORY BOARD

Complainant	Suvasin Moodley
Advertiser	Rain (Pty) Ltd
Consumer/Competitor	Consumer
File reference	766 - Rain - Suvasin Moodley
Outcome	Upheld
Date	17 July 2020

The Directorate of the Advertising Regulatory Board (“ARB”) has been called upon to consider a complaint lodged by Suvasin Moodley against advertising for Rain.

Description of the advertising

The complaint referred to an advertisement on the internet in which the Advertiser advertised that Africa’s first 5G network has arrived, and further stated that its 5G service offering has the following characteristics:

- unlimited data 24/7
- Your choice of network speeds
- Your choice of streaming quality
- Includes free-to-use premium 5G router
- Indoor or outdoor installation

A copy of the first Advertisement appears below:

rain

5G is here

LTE
ADSL

5G

ask rain

Africa's first 5G network has arrived. It's the future of all things internet, allowing South Africans to do more with data than ever before. And it all begins with rain's 5G for home.

what's rain's 5G for home?

- unlimited data 24/7
- Your choice of network speeds
- Your choice of streaming quality
- Includes free-to-use premium 5G router
- Indoor or outdoor installation
- just plug and play

where can i find 5G?

For now, rain 5G will only be available in certain areas in Johannesburg and Tshwane. During 2020, coverage will expand to Cape Town, Durban and other major metros. If you'd like us to contact you when 5G reaches your area, fill in your details [here](#).

Complaint

The Complainant submitted that the advertisement is misleading for the following reasons:

- unlimited data 24/7: The line continuously drops and is not available 24/7
- Your choice of network speeds – there is no choice. The line variability is vast
- Your choice of streaming quality – there is no choice. The line is very poor.

The Complainant further supplemented his complaint by providing the following second advertisement:

unlimited home
5G premium

- Average network download speeds over 200Mbps
- High quality video streaming
- Multiple HD streams
- Unlimited 24/7 home wifi

Includes free-to-use premium 5G Router

- Huawei 5G CPE X
- Plug and play with easy installation
- Optimised exclusively for the rain network
- Free delivery

Only available in Gauteng for now.

buy

In relation to this advertisement, he raised:

- Average network speed of 200Mbps: The network drops completely - no stability throughout the day and that cannot be captured through speedtest.net.
- Unlimited 24/7 home wifi: Network drops often - unusable for streaming or working online.
- Choice of network speeds: Although there are two packages, you don't have a choice. As seen from the chart, the network speeds are highly varied.
- Choice of streaming quality: Again, the network drops so often, you end up using mobile data.

Response

In response to the complaint, the Advertiser addressed each of the Complainant's initial concerns as set out below:

- Unlimited data 24/7 – The Advertiser claimed that data is unlimited since it does not charge per gig on the 5G product
- Choice of network speeds – The Advertiser claimed this choice referred to the type of 5G plan that a customer may select. There are two different 5G plans: Unlimited Home 5G Standard with speeds of up to 30Mbps and Unlimited Home 5G Premium with the average network download speeds of 200Mbps.
- Choice of streaming quality – The Advertiser claimed that this choice referred to the type of 5G plan that a customer may select and consequently will determine the streaming quality. The Unlimited Home 5G Standard offers HD (720) video streaming, while the Unlimited Home 5G Premium comes with Full HD streaming quality and multiple HD streams.

The Advertiser went on to state that in cases where a customer has purchased a plan but is in poor coverage, it will refund the affected customer.

The ARB requested a further response and substantiation from the Advertiser in respect of its claims, but the advertiser failed to respond.

Application of the Code of Advertising Practice

The following clauses of the Code of Advertising Practice (the "Code") were considered in this matter:

Clause 4.1 of Section II – Substantiation

Clause 4.2.1 of Section II – Misleading advertising

Decision

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

The Directorate starts by noting that, while the Complainant has linked his complaint to various claims, there are two core issues here:

- Does the 5G service offer average network download speeds over 200Mbps;
- Does it offer “Unlimited data 24/7”.

The remainder of the issues all circle back to the primary issue that the service is unstable and does not achieve the 200Mbps average.

Clause 4.1 of Section II of the Code states, *inter alia*:

“4.1.1 Before advertising is published, advertisers shall hold in their possession documentary evidence as set out in Clause 4.1 to support all claims, whether direct or implied, that are capable of objective substantiation.”

Clause 4.2.1 of the Code states that *“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.”*

Average network download speeds over 200Mbps

The Advertiser makes claims in the first and second advertisements relating to the speed and quality of the 5G service. The Complainant believes that these claims made by the Advertiser are untrue.

The Directorate notes that it may be the case that while the Advertiser is able to usually offer these standards, there is a service issue with a particular complainant that makes it impossible. The Directorate notes that it never requires that an Advertiser in this industry is able to meet the promised standards in every single unique situation, but it does require proof that the Advertiser is generally capable of meeting the advertised claims.

In terms of Clause 4.1.1 of the Code, the Advertiser must hold documentary evidence to support these claims that are capable of objective substantiation. In its response to the complaint, while the Advertiser provided clarity on its product offerings, it did not provide

substantiation to support the speed or quality claims. More specifically, there is nothing to show that the Advertiser actually offers the claimed performance. The Directorate afforded the Advertiser further opportunities to provide substantiation and the Advertiser failed to do so.

The claim is therefore unsubstantiated and in breach of Clause 4.1 of Section II.

The Advertiser's attention is drawn to Clause 4.1.7 of Section II.

Unlimited data 24/7

The Complainant has interpreted the claim that the 5G service provides "unlimited data 24/7" as the service being available all the time. It appears from the complaint that the "unlimited" claim is not in dispute but it is the "24/7" portion of the claim. In its response, the Advertiser stated that the data is unlimited as the Advertiser does not charge per gig. It has, however, not addressed the 24/7 issue.

The Directorate is of the view that the advertisement could be interpreted in two ways. It could mean that the data is unlimited all the time and therefore uncapped, in other words that there is no time period when the data is limited and when it is charged per gig. Alternatively, it could mean that the unlimited data is always available to the consumer without interruption. While the Advertiser has provided motivation for the first interpretation, it has not done so for the second. Given this, the Directorate is of the view that the claim is ambiguous and therefore misleading.

Accordingly, the Directorate finds that the claim contravenes Clause 4.2.1 of Section II of the Code.

Sanction

In view of the above decision, the Advertiser is instructed to remove or amend the advertisements immediately as deadlines permit, in terms of Clause 15.3 of the Procedural Guide.

Members of the ARB are instructed not to accept advertising with the claims:

- Average network download speeds over 200Mbps;
- Unlimited data 24/7.