

COMPLAINT NUMBER	18/027
COMPLAINANT	P McKenna
ADVERTISER	Spark New Zealand Trading Limited
ADVERTISEMENT	Spark New Zealand, Television
DATE OF MEETING	27 February 2018
OUTCOME	Not Upheld

SUMMARY

The Spark television advertisement for NZ's Unbeatable Unlimited Mobile plan has a voiceover which says "Live life unlimited with New Zealand's Unbeatable Unlimited Mobile Plan. Unlimited data, talk, text, Spotify and Lightbox on us. All for \$79.99 a month. Click, call or go instore to go unlimited." Conditions are displayed on the screen stating "Max speeds reduced after 22GB. No tethering or hotspots."

The Complainant said the use of the term 'Unlimited' by the Advertiser when describing its mobile plan was misleading because the plan had various limitations around maximum speed capacity and the use of tethering and hotspots.

The Advertiser said the advertisement made it clear the 'unlimited' statement referred to unlimited data, not unlimited speed. The Advertiser considered it had provided express clarifications alongside the benefits of the plan on offer.

The Complaints Board said the advertisement was clear what the term 'unlimited' applied to and consumers were not likely to be misled about what the plan offered. The Complaints Board ruled the advertisement had been prepared with a due sense of social responsibility and had not breached Basic Principle 4 or Rule 2 of the Code of Ethics.

The Complaints Board ruled the complaint was Not Upheld.

[No further action required]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rule 2 of the Code of Ethics. This required the Complaints Board to consider whether the advertisement contained anything which, either directly or by implication, was likely to deceive or mislead the consumer and if it had been prepared with a due sense of social responsibility to consumers and to society.

The Complaints Board ruled the complaint was Not Upheld.

The Complaint

The Complainant said the use of the term 'Unlimited' by the Advertiser when describing its mobile plan was misleading because the plan had various limitations such maximum speed capacity and the use of tethering and hotspots.

The Advertiser's Response

The Advertiser said the advertisement made it clear the 'unlimited' statement referred to unlimited data, not unlimited speed. The Advertiser considered it had provided express clarifications alongside the benefits of the plan on offer.

The Advertiser said the plan being promoted by the Unlimited Mobile Ad includes unlimited amounts of data, unlimited calling minutes, unlimited text messages and unlimited access to Spotify and Lightbox on the customer's account ("**Benefits**"). Spark is confident that the overall value proposition of the Plan, which offers these unlimited Benefits for \$79.99 a month is unbeaten by any other mobile plan in New Zealand.

The Advertiser clearly states the max speeds would reduce after 22GB. The Advertiser emphasised this was a mobile plan and specifically mentions the no tethering or hotspots in order to reiterate the plan is not for sharing or devices other than a mobile.

The Media Response

The CAB responded to confirm it had approved the G rated advertisement and had interpreted the phrase 'unlimited' in the context of mobile data to mean no maximum amount of mobile data and that limitations around the use of throttling, tethering or hotspots were outside this definition.

The Complaints Board Discussion

The Complaints Board began by discussing the likely consumer takeout of the advertisement. It agreed the name of the product "NZ's Unbeatable Unlimited Mobile Plan" made it clear this was a plan for use on mobile devices and the unlimited element referred to activities normally associated with mobile usage including data, calling minutes and text messages.

The Complaints Board said the advertisement made it clear the plan was for unlimited data not unlimited speed and the on-screen text informing consumers about speed reductions after 22GB of data use would leave potential customers in no doubt about the offer.

The Complaints Board said it was not misleading to use the word 'unlimited' and then clarify the restrictions of the offer as long as the restrictions were reasonable to a mobile plan and clearly explained. It also noted the advertisement clearly stated the Unlimited Mobile plan included unlimited amounts of data, unlimited calling minutes, unlimited text messages and unlimited access to Spotify and Lightbox on the customer's account. The Complaints Board likened the practise to advertisements using the 'terms and conditions apply' caveat at the end of an offer to inform consumers exactly what the offer encompasses.

The Complaints Board said the inclusion of the Hotspot Extra package on the website provided options to purchase features that a standard mobile plan would not include such as roaming or tethering options.

The Complaints Board said the advertisement had been clear in what it meant by the term 'unlimited' and consumers were not likely to be misled about what the plan offered. The Complaints Board ruled the advertisement had been prepared with a due sense of social responsibility and had not breached Basic Principle 4 or Rule 2 of the Code of Ethics.

Accordingly, the Complaints Board ruled the complaint was Not Upheld.

DESCRIPTION OF ADVERTISEMENT

The Spark television advertisement for NZ's Unbeatable Unlimited Mobile plan has a voiceover which says "Live life unlimited with New Zealand's Unbeatable Unlimited Mobile Plan. Unlimited data, talk, text, Spotify and Lightbox on us. All for \$79.99 a month. Click, call or go instore to go unlimited." Conditions are displayed on the screen stating "Max speeds reduced after 22GB. No tethering or hotspots. Standard NZ and Aus numbers."

The Website also includes the disclaimer "No tethering or hotspots unless you purchase a Hotspot Extra."

COMPLAINT FROM P MCKENNA

Spark are advertising an "Unbeatable Unlimited Mobile Plan" which has immediately beneath the main slogan:

1. Limitation on speed after a maximum capacity of 22GB
2. Limitation on using tethered connections
3. Limitation on use of hotspots

Therefore they are incorrect in using the term "Unlimited" when the plan is in fact limited by the above three limitations.

Their website page with this "unlimited" offer provides a link for "extras" in order to reduce the limitations.

CODE OF ETHICS

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2: Truthful Presentation - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

RESPONSE FROM ADVERTISER, SPARK NEW ZEALAND TRADING LIMITED

Complaint 18/027 – P Mckenna's complaint about Spark using the term "Unlimited" for its \$79.99 pay monthly Unbeatable Unlimited Mobile plan ("**Plan**") in the attached television ad ("**Unlimited Mobile Ad**"). In particular, P Mckenna says text "immediately beneath the main slogan" which reads "max speeds are reduced after 22GB [and] no tethering or hotspots" puts limitations on the Plan. **Enclosed** at Schedule 1 is a completed ASA response template setting out key advert information and below are our additional comments.

1. The Unlimited Mobile Ad made clear that the plan offers unlimited data, but not unlimited speed. Prominent clarifications are included in close proximity to the "Unlimited" claim in all advertising to ensure the benefits of the plan are understood.
2. The plan being promoted by the Unlimited Mobile Ad includes unlimited amounts of data, unlimited calling minutes, unlimited text messages and unlimited access to Spotify and Lightbox on the customer's account ("**Benefits**"). Spark is confident that the overall value proposition of the Plan, which offers these unlimited Benefits for \$79.99 a month is unbeaten by any other mobile plan in New Zealand.

3. The explanation of these Benefits in the Unlimited Mobile Ad is accompanied by express clarifications in prominent on-screen text that “max speeds are reduced after 22GB [and] no tethering or hotspots” (“**Clarifications**”). Giving such prominence to the Clarifications alongside the Benefits demonstrates a due sense of social responsibility, in compliance with Principle 4, by bringing important Plan attributes to consumers’ attention. These Clarifications:
 - (a) help explain the Benefits in context of the Plan as a whole, including the price point; and
 - (b) ensure there can be no risk of a consumer being misled that the Benefits grant access to unlimited data *speeds* or the ability to share data with other people or devices through tethering or hot-spotting.
4. Spark believes that the Plan is well understood by consumers and the nature of the Plan’s Benefits are clearly explained. Furthermore, the Plan’s Benefits and Clarifications have been presented truthfully, so that the overall impression of the Unbeatable Unlimited Ad is not misleading, in compliance with Rule 2.

Speeds reduce after 22GB

5. In all of our adverts for the Plan, we have been careful not to state or otherwise imply that customers will receive unlimited amounts of full speed data. The “max speeds reduced after 22GB” clarification in prominent main body text in our adverts means consumers are clear about the existence of this clarification before deciding to sign up for the Plan.
6. While speeds are reduced on the Plan after 22GB, consumers are still receiving significantly more data than they would under any other mobile plan in the New Zealand market at the price point. Furthermore, after 22GB, customers are able to do the things they would ordinarily do at the reduced speed, including streaming video footage (with some degradation). In practice, customers on the Plan or any other plan, from Spark or another provider, even at “full speed” may not experience maximum speeds due to factors such as personal device capability, network usage by other customers and cell phone tower proximity.

No tethering or hotspots

7. We are responding to P McKenna’s complaints about the “limitation on using tethered connections [and] limitation on use of hotspots” jointly, as tethering and hotspotting are the same practice of sharing mobile data from one plan to another device. For example, a customer could share their connection using a cable (tethering) or wireless Bluetooth (hotspotting).
8. In the Unlimited Mobile Ad we are clear that the Plan is a “Mobile Plan”. The word “mobile” was used deliberately to help convey to customers that the Plan is for use on their personal mobile only. The Plan is not for sharing with other people or devices. To avoid any risk of misunderstanding overall Plan attributes, the “no tethering or hotspots” clarification also appears in prominent text below the headline in adverts for the Plan.

Extras

9. P Mckenna has commented that Extras offered by Spark for customers to buy in addition to their base plan, are provided “in order to reduce the limitations” on the Plan. We do not agree with this statement.
10. Spark’s Extras offer additional features, which are not included with standard customer plans. Customers who require non-standard features can choose to purchase these Extras at an added cost, to suit their individual circumstances. For example, roaming overseas is not included with Spark’s plans, but customers who are travelling may choose to buy a Roaming Pack Extra. Providing Extras in this way means that customers who do not need roaming, tethering or other Extras do not have to pay for these additions in their monthly plan cost.
11. In light of the above, we believe that the availability of Extras would not mislead consumers about the Benefits and inclusions of the Plan advertised.

Schedule 1 – Response template for Complaint 18/027 re Unlimited Mobile Ad

Contact person for advertising complaints	Kelly Baxter
Name and contact at creative agency	N/A
Name and contact at media agency	N/A
A basic, neutral description of the advertisement	A television advert to promote the launch of Spark’s Unbeatable Unlimited Mobile Plan (“ Plan ”), which gives a custome unlimited amounts of data, talk, text, Spotify and Lightbox for \$79.99 a month.
Date advertisement began	1 September 2017
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	TV, AV, Digital, Spark.co.nz, OOH, Radio & Social.
Is the advertisement still accessible – where and until when?	The television advert is not presently airing. Other marketing materials for the Plan are still live.
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	Attached with response.
Who is the product / brand target audience?	All current and prospective customers
Clear substantiation on claims that are challenged by the complainant.	N/A

The response from the advertiser is included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the Complaints Manager if this is an issue.	Please see body of letter above.
For Broadcast advertisements:	
A copy of the script	See enclosed at Schedule 2.
A copy of the media schedule and spot list	See enclosed at Schedule 3.
CAB key number and rating	'G' rating on CAB approval number #71024043
For Digital advertisements:	N/A
What platform tools have you used to target your audience?	

**RESPONSE FROM MEDIA, CAB SPARK TELEVISION ADVERTISEMENT
COMPLAINT: 18/027 KEY: ASPK01500409 RATING: G**

We have been asked to respond to this complaint under the following codes:
Code of Ethics – Basic Principle 4, Rule 2;

CAB approved this Spark commercial on 24/10/17 with a G classification. Under CAB internal policies, this commercial is classified as a Telecommunication advertisement.

A complainant has challenged the use of the term 'Unlimited' with reference to data: a perennial issue of interpretation between advertisers and a small minority of viewers in the telecom advertising market.

CAB interprets the phrase 'unlimited' in the context of mobile data to mean 'no maximum amount of mobile data'; the use of throttling, tethering or hotspots is not a limit to this end.

For technical details, CAB will defer to the advertiser.

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.