

COMPLAINT NUMBER	19/280
COMPLAINANTS	C Fullerton & R Perry
ADVERTISER	Spark New Zealand Ltd
ADVERTISEMENT	Skinny Mobile Television
DATE OF MEETING	10 September 2019
OUTCOME	Not Upheld No further action required

Description of Advertisement

The television advertisement for a Skinny mobile plan describes the product as “unlimited”. Twenty seconds into the 30 second advertisement the following text appears on screen, (until the end of the advertisement): “Max speeds reduced after 40GB... “

In addition to this, the following text also appears briefly during the advertisement: “Hotspotting included. Standard person to person text and calls. Plan compared to comparable monthly single customer unlimited plan price with hotspotting included. No rollover, purchase of Data Binge or Gifting. Unlimited texts and calls are for Standard NZ & AU.”

Summary of the Complaint

There were two complaints about this advertisement. Both complainants were concerned the advertisement was misleading because it describes the mobile plan as “unlimited” yet there is a speed limit for the internet service after 40 GB.

Issues Raised:

- Truthful Presentation

Summary of the Advertiser’s Response

The Advertiser said the advertisement makes it clear the plan offers unlimited data, but not unlimited speed.

Summary of the Complaints Board Decision

The Complaints Board did not uphold two complaints that the television advertisement for Skinny mobile was misleading. The Board said the advertisement makes it clear that the data available is unlimited, but the data speed will be affected, after 40GB.

Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

ADVERTISING STANDARDS CODE

Principle 2: Truthful Presentation: Advertisements must be truthful, balanced and not misleading.

Rule 2(b): Truthful Presentation: Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

Relevant precedent decisions

In considering this complaint the Complaints Board referred to a precedent decision, Decision 18/027 which was Not Upheld.

The full version of this decision can be found on the ASA website:

<https://www.asa.co.nz/decisions/>

Decision 18/027 also concerned an advertisement for a Spark New Zealand “unlimited” mobile plan. The Complaints Board said the advertisement was clear what the term “unlimited” applied to and good consumers were not likely to be misled about what the plan offered.

Complaints Board Discussion

Consumer Takeout

The Complaints Board agreed the consumer takeout was that Skinny has the lowest price unlimited mobile plan.

The Complaints Board noted the advertisement makes humorous references to “The Matrix” movie.

Is the advertisement misleading?

The Complaints Board agreed the advertisement was not misleading. This is because the advertisement makes it clear that the data available is unlimited, but the data speed will be affected, after 40GB.

The Complaints Board said the actor in the advertisement describes the Skinny mobile plan as “unlimited” on multiple occasions and he does not define exactly what this means.

The Complaints Board said a reasonable person would expect that the “unlimited” nature of the product would apply to the data available, rather than to the speed. Calls and texts are generally unlimited in the present retail environment, but speed is not. The Board noted the data speed experienced by the consumer depends on many different factors, including the device being used, the time of day etc... and this can vary from consumer to consumer and location to location.

The Complaints Board agreed the restriction regarding speed was made sufficiently clear in the advertisement, when balanced with the number of times the word “unlimited” is used.

The Complaints Board also noted that the supers that appear on the screen explain that the plan has a restriction on data speed after 40 GB.

The Complaints Board said the advertisement was not misleading, taking into account context, medium, audience and product and was not in breach of Principle 2 or Rule 2(b) of the Advertising Standards Code.

Outcome

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required.

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.

APPENDICES

1. Complaint
 2. Response from Advertiser
 3. Response from Media
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Appendix 1

COMPLAINT FROM C FULLERTON

Add describes in multiply quotes that their internet service is unlimited, however in small print it states it has speed limits after 40kb so is therefore not unlimited

Appendix 2

COMPLAINT FROM R PERRY

Skinny mobile advert - advertising unlimited broadband. Repeating the term "unlimited" repeatedly throughout the advert. Then in the printed onscreen text at the end "speed reduced after 40mb" - by definition "unlimited" means "without limits or constraints" - the service is clearly not unlimited and should not be represented as such. Other telcos such as spark nz are also guilty of similar misrepresentations, applying similar restrictions on unlimited mobile broadband plans.

Appendix 3

RESPONSE FROM ADVERTISER, SPARK

RE: Complaint 19/280 (Spark NZ Limited Television)

1. Thank you for your letter of 7 August 2019 and for allowing us the opportunity to respond to Complaint 19/280, which relates to two complainants:
 - (a) Complainant R Perry's complaint is about Skinny using the term "Unlimited" for its Unlimited mobile plan ("**Unlimited Mobile Plan**") in the attached television ad ("**Unlimited Mobile Ad**"). In particular, the Complainant notes that the printed onscreen text at the end of the Unlimited Mobile Ad states that speeds reduce after 40GB, and that "by definition "Unlimited" means "without limits or constraints", the service is clearly not unlimited and should not be represented as such".
 - (b) Complainant C Fullerton's complaint is also that the Unlimited Mobile Ad states that the service is unlimited, but the small print states that it has speed limits after 40GB, so it is therefore not unlimited.
2. **Enclosed** at Schedule 1 is a completed ASA response template setting out key advert information and below are our additional comments.
3. We note the ASA has identified the relevant section in the Advertising Codes of Practice as Principle 2, Rule 2(b) (Truthful Presentation).

The Unlimited Mobile Plan

4. The Unlimited Mobile Plan consists of unlimited mobile data, calls and texts, for \$77 (renews every 4 weeks). The amount of data a customer can use is unlimited, but

speeds will reduce after they have used 40GB per billing cycle (“**Speed Clarification**”).

5. Reducing the speeds of data after 40GB of usage and including a clearly disclosed Speed Clarification in marketing materials is consistent with current industry practice in New Zealand. In particular:
 - (a) 2degrees offers an unlimited mobile plan at \$85 per month, and speeds reduce after 40GB of usage (and additionally, hotspotting speeds may be reduced further during periods of network congestion);
 - (b) Vodafone offers an unlimited mobile plan at \$79.99 per month, and speeds reduce after 40GB of usage (and additionally, streaming is capped at 480p/SD); and
 - (c) Spark offers an unlimited mobile plan under the Spark brand at \$79.99, and speeds reduce after 40GB of usage.
6. In contrast, Skinny’s Unlimited Mobile Plan is priced at \$77, and (like Spark’s) has no other speed or quality limitation except for the 40GB Speed Clarification.
7. After 40GB, our 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 Unlimited Mobile Plan or any other plan, from Skinny 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.
8. To help customers easily understand its “unlimited” mobile offering Skinny clearly includes reference to the Speed Clarification in all of its unlimited mobile marketing collateral.

The Unlimited Mobile Ad

9. The Unlimited Mobile Ad makes clear that the plan offers unlimited data, but not unlimited speed. A prominent Speed Clarification is included in close proximity to the “Unlimited” claim to ensure the benefits of the plan are understood.
10. In particular, in the Unlimited Mobile Ad:
 - (a) The Speed Clarification is included on the main screen during the interaction between the two characters (in contrasting text to the light grey background, in the empty space in the bottom right); and
 - (b) The Speed Clarification is included again on the final, orange screen (along with the details of the Unlimited Mobile Plan), in prominent orange lettering under the reference to “The Unlimited Mobile Plan”. This wording moves to the right (giving it even greater prominence).
11. These prominent references ensure that the Speed Clarification is understood, obvious, and located and presented in such a way as to be clearly and easily read, in accordance with Principle 2, Rule 2b.
12. We consider that the nature of the Unlimited Mobile Plan (including the Speed Clarification) has been presented truthfully, and that the overall impression of the Unlimited Mobile Ad is not misleading, in compliance with Principle 2, Rule 2b.

A basic, neutral description of the advertisement	A television advert to promote Skinny's Unlimited Mobile Plan (" Plan "), which gives a customer unlimited amounts of data, talk, text, for \$77.
Date advertisement began	28/07/2019
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	On Television. On Social. On TVNZ on demand.
Is the advertisement still accessible – where and until when?	Yes. Until 27 th October 2019.
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 in email.
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	Attached.
A copy of the media schedule and spot list (Please remove all financial information)	Attached.
CAB key number and rating	SKI/030/00261

Appendix 4

RESPONSE FROM MEDIA, COMMERCIAL APPROVALS BUREAU

We have been asked to respond to this complaint under the following codes:
Advertising Standards Code - Principle 2, Rule 2(b).

CAB approved this Skinny commercial on 23/04/19.

The ASCB has a body of precedent decisions around the use of 'Unlimited' in telco advertising.

Attached is a recent example – Complaint 18/027 which was not upheld.

“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.”

In the precedent example we see speed versus amount of data, as in the current complaint. CAB believes the precedent decided in 2018 should still hold effect.