

COMPLAINT NUMBER	16/356
COMPLAINANT	A. Gardner
ADVERTISER	2 Degrees Mobile Limited
ADVERTISEMENT	2 Degrees Poster
DATE OF MEETING	15 November 2016
OUTCOME	Not Upheld

SUMMARY

The 2 Degrees Mobile Limited in-store poster advertisement contained, in large white type, the words: "Only 2degrees gives you Pay Monthly Carryover Data that doesn't disappear every month." The 2 Degrees logo appeared in the bottom corner of the advertisement.

The Complainant's concern was that the in-store poster stated that 2 Degrees was the only mobile provider with roll over data when Vodafone also had a roll over plan at the same rate.

The Complaints Board said the advertisement was clearly referring to Pay Monthly plans and did not claim that 2degrees was the only company offering carryover data in all circumstances, only on Pay Monthly plans.

Accordingly, the Complaints Board ruled to Not Uphold the complaint.

[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 and Principle 1 of the Code for Comparative Advertising. This required the Complaints Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society and whether it had been truthfully presented or whether it contained any statement or visual presentation or created an overall impression which directly or by implication, omission, ambiguity or exaggerated claim was misleading or deceptive, was likely to deceive or mislead the consumer, made false and misleading representation, abused the trust of the consumer or exploited his or her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading). The Complaints Board was required to consider, with reference to Principle 1 of the Code for Comparative Advertising, whether comparisons in the advertisement misled or deceived or were likely to mislead or deceive consumers.

The Complaints Board ruled the Complaint was Not Upheld

The Complaints Board first considered the Complainant's concern that the in-store poster

claimed that 2Degrees Mobile Limited was the only mobile provider with roll over data when Vodafone also had a roll over plan at the same rate.

The Complaints Board then turned to the response from the Advertiser, 2Degree Mobile Limited (2degrees) The Advertiser reiterated that the in-store poster stated: "Only 2degrees gives you Pay Monthly Carryover Data that doesn't disappear every month."

The Advertiser said in part: "The in-store poster describes one of the benefits available on our Pay monthly plans, namely the availability of Carryover Data. The representation made in the in-Store Poster is true and accurate as 2degrees offers Carryover Data on its Pay Monthly plans and Vodafone, Spark and Skinny do not. It is therefore correct that only 2degrees offers this benefit."

The Advertiser continued: "The in-store poster makes a like-for-like comparison in respect of Pay Monthly benefits. It does not claim that we are the only mobile provider that offers carryover data in all circumstances as we are aware that both Skinny and Vodafone offer a carryover data option on certain prepaid plans. However, 2degrees is the only mobile operator that offers Carryover Data on its postpaid Pay Monthly plans. The In-store poster clearly references 'Pay Monthly' and does not make any claims or representations in respect of prepaid services."

The Advertiser submitted that "pay monthly" was understood as a product distinct from "prepay" and Pay Monthly was 2degrees brand name for its "on account" plans where consumers paid in arrears for their mobile usage. Spark also used the term "Pay Monthly" for its monthly on account plans.

The Advertiser noted the Complainant had stated that Vodafone also had a roll over plan at the same rate but was mistaken because Vodafone did not offer roll over data on any of its comparable "on account" plans.

The Complaints Board confirmed that the advertisement clearly referred to Pay Monthly plans, which the Complainant appeared to have missed. The advertisement did not claim that 2degrees was the only company offering carryover data in all circumstances, just on Pay Monthly plans. The Complaints Board noted that Vodafone had a pre-pay carryover plan but not a Pay Monthly account plan and that the roll over in the advertisement clearly pertained to the 2degrees Pay Monthly account rather than the prepaid term offered by Vodafone. The Complaints Board considered the Advertiser's response had clarified the situation and confirmed that 2degrees was the only provider with data carryover on monthly post-paid plans.

The Complaints Board found that the advertisement was not in breach of Basic Principle 4 and Rule 2 of the Code of Ethics

The Complaints Board therefore ruled the complaint was Not Upheld.

Decision: Complaint Not Upheld

DESCRIPTION OF ADVERTISEMENT

The 2Degrees Mobile Limited instore poster said, in large white type on a stylised blue and grey background, that "Only 2degrees gives you Pay Monthly Carryover Data that doesn't disappear every month." A large 2Degrees logo appeared on the bottom right-hand corner of the poster and the words "Conditions apply, see 2degreesmobile.co.nz" ran along the lower edge of the poster.

COMPLAINT FROM A. GARDNER

Poster instore states that they are the only mobile provider with roll over data. Vodafone also has a roll over plan at the same rate

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).

CODE FOR COMPARATIVE ADVERTISING

Principle 1: Comparisons in advertising should not mislead or deceive or be likely to mislead or deceive consumers. (Obvious hyperbole, identifiable as such, is not considered misleading).

RESPONSE FROM ADVERTISER, 2 DEGREES MOBILE LIMITED

1. I refer to the letter received from the Advertising Standards Authority (**ASA**) on 18 October 2016 regarding the complaint the ASA had received in respect of 2degrees' poster at our Chartwell retail store promoting 2degrees' Carryover Data proposition ("**In-store Poster**").
2. Our response (set out in full below) is on behalf of Two Degrees Mobile Limited only.
3. Please be assured that we are committed to ensuring all of our advertising is clear and not misleading and complies in all respects with the ASA's Codes of Practice (Codes), including the Code of Ethics and Code for Comparative Advertising.

Codes relevant to the complaint

4. The Codes that you have highlighted as being relevant to this complaint relate to misleading and deceptive statements made in advertisements.
5. In particular:
 - a. Basic Principle 4 of the Code of Ethics requires advertisements to "*be prepared with a due sense of social responsibility to consumers and to society*";
 - b. Rule 2 of the Code of Ethics states that advertisements must not contain any statement or create an overall impression which is misleading or deceptive, or is likely to mislead or deceive, or abuses the trust of the consumer or exploits his/her lack of experience or knowledge; and

- c. Principle 1 of the Code for Comparative Advertising also requires that *"comparisons in advertisements should not mislead or deceive or be likely to mislead or deceive consumers", with the Guidelines for this Principle 1 further prescribing that, when a comparison is made, "it should be clear with what the comparison is being made, i.e. price to price, dimension to dimension, feature to feature"*.

6. *In-Store Poster*

7. We do not consider the In-Store Poster to be in breach of any of the Codes, including any of the relevant Codes highlighted in your letter.
8. The In-Store Poster states *"Only 2degrees gives you Pay Monthly Carryover Data that doesn't disappear every month"*.
9. The In-Store Poster describes one of the benefits available on our Pay Monthly plans, namely the availability of Carryover Data. The representation made in the In-Store Poster is true and accurate as 2degrees offers Carryover Data on its Pay Monthly plans and Vodafone, Spark and Skinny do not. It is therefore correct that only 2degrees offers this benefit.
10. The In-store Poster makes a like for like comparison in respect of Pay Monthly benefits. It does not claim that we are the only mobile provider that offers carryover data in all circumstances as we are aware that both Skinny and Vodafone offer a carryover data option on certain prepaid plans. However, 2degrees is the only mobile operator that offers Carryover Data on its postpaid Pay Monthly plans. The In-Store Poster clearly references "Pay Monthly" and does not make any claims or representations in respect of prepaid services.
11. Pay Monthly is understood in the market by consumers as a distinct product from prepay. Pay Monthly is 2degrees' brand name for its "on account" plans where consumers pay for their mobile usage in arrears. Spark also uses the term "Pay Monthly" for its monthly on account plans.
12. The complainant, Mr Gardner, has stated that Vodafone also has a roll over plan at the same rate. However, he is mistaken, as Vodafone does not offer roll over data on any of its comparable "on account" plans.
13. As such, we do not consider our In-Store Poster to be in breach of the Code of Ethics as the In-Store Poster is not misleading or deceptive. It is a statement of fact that 2degrees is the only mobile operator that offers Carryover Data on its Pay Monthly plans.
14. I hope that this deals adequately with your concerns. Please contact me if you would like to discuss this matter further.