

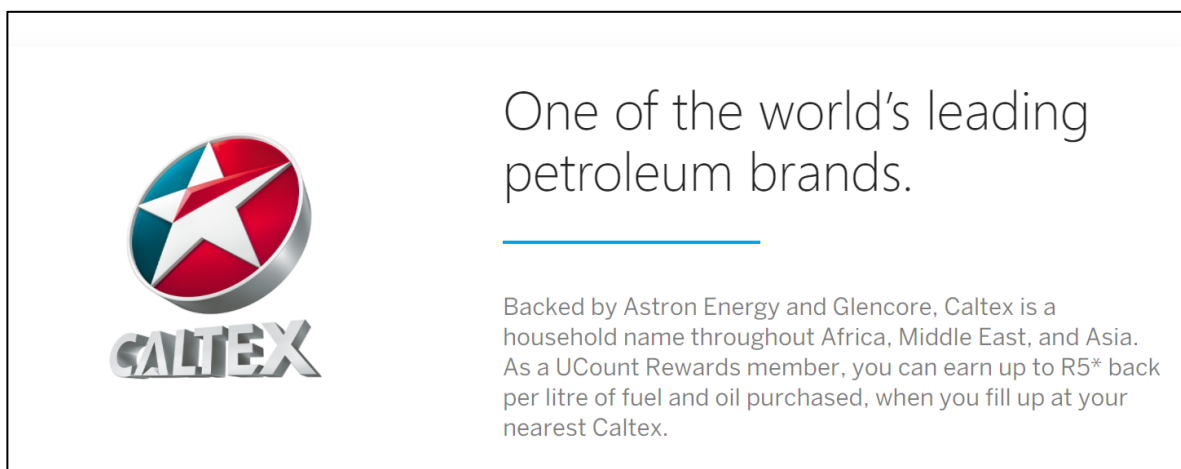
## Decision of the ADVERTISING REGULATORY BOARD

Complainant	Rajesh Narotam
Advertiser	The Standard Bank of South Africa Limited
Consumer/Competitor	Consumer
File reference	1357 - Standard Bank - Narotam
Outcome	Upheld
Date	15 April 2021

The Directorate of the Advertising Regulatory Board has been called on to consider a consumer complaint against Standard Bank’s advertising promoting its “UCount” rewards programme.

### Description of the advertising

The advertising claims, *inter alia*, that customers are eligible for “... up to R5\* back per litre of fuel and oil purchased, when you fill up at your nearest Caltex”. The Complainant provided the following image, taken from the Advertiser’s website:



In addition, examples of the following outdoor executions at Caltex fuelling stations were submitted:



## Complaint

The Complainant submitted that the notion that one could earn as much as R5 per litre of fuel (or oil) purchased is misleading, because the rewards system is created to exclude most UCount customers from achieving this top-tier reward. UCount rewards are allocated depending on which tier one sits at, and only the top (5<sup>th</sup>) tier qualifies for R5 per litre of fuel (or oil). Customers who are on the 4<sup>th</sup> tier only receive R1,25 per litre.

However, in order to reach the top (5<sup>th</sup>) tier an additional qualifying criterion is imposed beyond simply accumulating enough points: one needs to spend, on average, R20 000 per month on one's credit card. This is a significant barrier to entry, making it unattainable for most customers.

## Response

Attorneys Bouwers Inc., on behalf of the Advertiser, submitted that customers who join the UCount rewards programme are required to familiarise themselves with all aspects and details thereof when joining. It is evident that the Complainant understands how the programme works, and knows that top-tier rewards are only earned by meeting the criteria stipulated in various documents available on its website [www.standardbank.co.za/ucount](http://www.standardbank.co.za/ucount).

The claim clearly informs customers that this reward is tied to fuel purchases by UCount Rewards members at Caltex fuel stations. The prominent asterisk makes it clear that there are conditions attached to this reward. The objection appears to relate more to the inclusion / exclusion criteria applicable to each tier than the actual advertising.

One of the central features of the UCount Rewards Programme is that the rewards points offered are dependent on factors such as the member's banking activity and the number of the Advertiser's products and services that the member uses within a reward cycle. It utilises a 5-tier system and rewards members according to the tier for which they qualify. Tier-1 is the entry level and members will progress to tiers 2, 3, 4 and 5 when they have accumulated sufficient tiering points and meet the qualifying criteria under each tier. Members on higher tiers receive higher reward points, but are required to spend more in order to earn these higher rewards. It is therefore logical that there would be substantially more tier-1 customers than tier-5 customers, as the qualification criteria for tier-1 is substantially lower than that of the subsequent tiers. Given that the qualification criteria for tier-5 is so high, only about 1% of its customers ever reach this tier. However, this still translates into thousands of Standard Bank UCount Rewards customers. This is not an insignificant number.

It also rejected the argument that a monthly credit card spend of R20 000 puts this tier beyond the reach of most customers, and submitted that approximately 4% of all its members spend this much or more each month (irrespective of which UCount tier they might be).

The Advertiser referred to a ruling issued by the Advertising Standards Authority of South Africa (the "ASA") under the reference Standard Bank/ R Pieterse/ 22453. At that time, the ASA acknowledged that rewards programmes are typically intricate and detailed, and that customers were expected to familiarise themselves with the rules and qualifying conditions that apply. The ASA also accepted that a complicated rewards programme does not necessarily equate to a misleading programme, and that consumers need to determine

whether they stood to benefit prior to joining. Advertising used to announce a particular benefit should not be interpreted to suggest that that benefit automatically applies to all members of such a rewards programme.

The Advertiser pointed out that it has created a “Rewards Estimator”, which is available to all prospective UCount Rewards members on its website. This tool allows prospective customers gain understanding of the programme and gauge how rewarding this programme might be for them.

### Application of the Code of Advertising Practice

The Directorate considered the following provisions of the Code to be relevant:

- Clause 4.2.1 of Section II (Misleading claims)
- Clause 4.5 of Section II (“Up to ...” and “from ...” claims)

### Decision

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

It should be noted that there is a fine line between pronouncing on the mechanisms and general manner in which the UCount Rewards programme is administered (which is not within the jurisdiction of the ARB), and pronouncing on whether the advertising used to promote this programme is potentially misleading or otherwise in breach of the Code (which is within the jurisdiction of the ARB). The complaint speaks to both elements.

On the one hand, the Complainant argues that the programme contains certain prerequisites that effectively exclude most participants. This is not an advertising issue and does not fall within the ambit of the ARB Code. The Advertiser is free to structure its rewards programme as it wishes.

The only question before the Directorate is whether the claim, “... up to R5\* back per litre of fuel and oil purchased, when you fill up at your nearest Caltex” is misleading or in breach of Clause 4.5 of Section II.

Firstly, the Directorate notes that it is not disputed that this benefit is advertised and understood as being available to customers on the UCount programme only. The offer therefore has to be understood in the context of this rewards programme.

The Directorate is mindful of the fact that tiered reward programmes such as this are typically complicated, cater for a diverse member base, and would not reward every member in an equal proportion. In addition, the top tier of rewards is typically difficult to attain, and holds the greatest benefits. Reasonable consumers are likely to appreciate this fact.

In addition, it is acknowledged that all material before the Directorate indicated that customers could earn “*up to*” R5 per litre of fuel or oil. The words “*up to*”, in conjunction with a clear asterisk next to the amount of R5, obviously serve to alert interested customers to the fact that there are likely to be conditions attached to this particular reward. A reasonable consumer would surely seek to interrogate these conditions before merely assuming that he or she would immediately qualify for the advertised benefit. This is especially true as the target consumer is a UCount customer, and already aware of the tiered structure.

There is also no allegation before the Directorate that the Advertiser does not award R5 per litre to qualifying customers, or that it awards R5 in an arbitrary manner.

Clause 4.5 of Section II clarifies that advertisers should not make “*Up to ...*” or “*From ...*” claims in the following circumstances:

- When there is a likelihood of consumers being misled as to the availability of the product or service being advertised,
- When the price or advantage offered bears no relevance to the prevailing price or benefits (especially when the advertised price or benefit does not apply to the goods or services being advertised, or only to an insignificant proportion of them), and
- When the price or advantage claimed applies to spoilt, imperfect or inferior goods, or to goods that are subject to greater limitations than the bulk of those on offer.

In short, advertisers are expected to refrain from using “*Up to ...*” or “*From ...*” claims in instances where they do not (1) apply the “*Up to ...*” or “*From ...*” benefit to the product or service in the advertisement, (2) only apply it to an insignificant proportion, (3) only apply it to goods or services that are inferior to those being advertised, or (4) subject the relevant goods or services to greater limitations than the rest (which makes it difficult, if not impossible to obtain the advertised benefit).

As noted earlier, there appears to be no dispute over the fact that the advertising is aimed at UCount customers, and not the general public. In addition, it is accepted that all the Advertiser's tier-5 customers will receive R5 per litre of fuel or oil purchased at Caltex. The Complainant also appears to acknowledge and accept that the advertised "up to R5\*" is the top-tiered reward, and that lower-tiered customers would receive a proportionately lower reward.

The problem lies in the fact that while the advertising is aimed at all UCount customers, only a small minority of UCount Rewards customers would reach tier-5 in order to qualify for the maximum R5 per litre reward. There is nothing in the advertising, over and above the asterisked reference to a small disclaimer which generally refers to terms and conditions, to indicate that this benefit is only available to tier 5 customers. To qualify for this tier, UCount customers have to spend at least R20 000 on their credit cards each month in addition to meeting all other qualifying criteria. The Advertiser acknowledged this and confirmed that approximately 1% of its UCount Rewards members qualify for this tier, although approximately 4% of all UCount members spend R20 000 a month on their credit cards (irrespective of which tier they occupy).

This presents a problem, because clearly the advertised reward of R5 per litre of fuel or oil purchased applies to only 1% of all UCount Rewards members. It is also evident that the R5 reward is "*subject to greater limitations than the bulk of the offer*", which is prohibited in terms of Clause 4.5.1.2 of Section II.

The Directorate wishes to be clear in this regard: The Advertiser is free to impose whatever requirements it wishes, within the law, to its rewards programme. It is acceptable that the tier 5 requirements include a R20 000 credit card spend.

The issue is that the advertising offers an "up to R5" benefit to ALL UCount customers, and only 1% of that target market qualify. If the advertising clarified, whether in the body copy or in a clear and legible disclaimer, that the R5 discount was ONLY aimed at tier 5 customers, then arguably 100% of the target market defined in the advertisement would qualify, and Clause 4.5 of Section II would not be triggered.

Put differently, the Advertiser appears to be advertising a benefit that is outside the reach of 99% of its UCount customers, but is not clarifying this in the advertising. The hypothetical reasonable person, on seeing the advertising, will think one of two things:

- I should join UCounts to get R5 back per litre on my fuel; or

- I am on UCounts, so I should buy my fuel at Caltex to get R5 back.

However, only 1% of these consumers would actually receive the benefit. In addition, the discrepancy between the only advertised reward (tier-5 at R5 per litre) and the lower tiered rewards is material and significant. The next best possible return is R1,25 per litre, one quarter of that which is advertised. This discrepancy is likely to create a misleading expectation with reasonable consumers, who are only exposed to a promise of a potential significant saving.

This is the type of deception Clause 4.5 of Section II seeks to avoid. It states that claims of this nature “... *are not acceptable where there is a likelihood of the consumer being misled as to the availability of the benefits offered*”, and should not be used when they apply to “... *an insignificant proportion* ...”

The Directorate acknowledges that the Advertiser is permitted to impose legal limitations on its members. The problem, however, is that the advertising promotes a reward in a manner that suggests a broader availability and likelihood of achieving the advertised benefit than is actually the case.

As noted earlier, reasonable customers would realise that this is an “*Up to*” claim, and that qualifying criteria would apply. However, the advertising leverages a promised reward that is generally unattainable by the overwhelming majority of customers (99% at the time of this ruling), and the advertising contains no indication that this is the case. It is therefore not available to a “significant proportion” of the target market, as is required by the Code.

**For all the above reasons, the advertised claim of earning “*Up to R5<sup>per</sup>*” for every litre of fuel or oil purchased is presented in a misleading manner that contravenes Clauses 4.2.1 and 4.5 of Section II of the Code.**

## Sanctions

The Advertiser is therefore requested to remove or amend its claim with immediate effect and within the deadlines stipulated in Clause 15.3 of the Procedural Guide.