



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	FoneWorks MTN
Telephone Network(s)	Vodacom Cell C
Information Provider (IP) (if applicable)	Hortors Stationery (Pty) Ltd through their information systems integrator Stouf Communications (Pty) Ltd
Service Type	Premium rated SMS for product to be delivered via e-mail
Source of Complaints	Public
Complaint Number	#0006

Complaint

A complaint was received indicating that Hortors (a leading provider of legal and related stationery) were marketing certain standard legal forms on their Internet web site www.hortors.co.za. These forms can be purchased in newsagents and stationers in paper form and were now being offered in electronic form on the web site, with premium rated sms being used as the order and payment mechanism.

The complainant alleges that there was no pricing information on the web site and additionally, he did not receive the content ordered.

The following breaches of the WASPA Code of Conduct were raised:

3.9. Information providers

3.9.1. Members must bind any information provider with whom they contract for the provision of services to ensure that none of the services contravene the Code of Conduct.

4.1. Provision of information to customers

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

6.2. Pricing of services

6.2.2. All advertisements for services must include the full retail price of that service.

6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.

6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

6.2.5. The price for a premium rated service must be easily and clearly visible in all advertisements. The price should appear with all instances of the premium number display.

The Secretariat conducted an investigation into the service offered by the IP. The section of the web site allowing for forms to be ordered had been disabled at the time of the investigation and has subsequently been totally removed.

Investigation

The Secretariat received a response from the SP, containing a response from the IP as well. The response only addressed the alleged infringement of clause 4.1.1 of the WASPA Code of Conduct and did not address any of the other alleged infringements of the WASPA Code of Conduct.

4.1. Provision of information to customers

The response in respect of clause 4.1.1 of the WASPA Code of Conduct was to admit that content had not been delivered to customers from the automated system, however this was due to the failure of the information system integrator, Stouf. The IP alleged that it had manually sent ordered content to those customers who contacted them to complain.

The SP further indicated that it had refunded the cost of the premium-rated sms to the Complainant.

It appears that the systems integrator referred to as "Stouf" is Stouf Communications (Pty) Ltd, which is a member of WASPA. The SP implied in its response that forwarded the complaint to Stouf Communications (Pty) Ltd and had received no response from the. This implication is not sufficient to indicate that Stouf Communications (Pty) Ltd has had sight of the Complaint and the WASPA Secretariat has not forwarded a copy of the Complaint to Stouf Communications (Pty) Ltd, as the Complaint related to a short code assigned by the SP and not Stouf Communications (Pty) Ltd.

Decision

The Adjudicator upheld the complaint in respect of Clauses 3.9.1 and 4.1.1 of the WASPA Code of Conduct. The Adjudicator did not uphold the complaint in respect of clauses 6.2.2, 6.2.3, 6.2.4 and 6.2.5 of the WASPA Code of Conduct, due to insufficient information having been supplied to show that the cost of the service had

not been displayed in the web site advertisement, whether in accordance with the WASPA Code of Conduct, or at all as alleged in the complaint.

The Adjudicator has imposed the following sanction:

- The SP is required to remedy its breach of clause 3.9.1 of the WASPA Code of Conduct;
- The SP is formally reprimanded for its failure to ensure compliance by the IP with the WASPA Code of Conduct; and
- The SP is required to reimburse the complainant. To the extent that this has already occurred, as indicated in the SP's response to the complaint, the SP is to provide reasonable proof thereof to the WASPA Secretariat. The SP is further ordered to ensure that all other persons who ordered content from the IP and where such content was not delivered through the manual intervention of the IP, are similarly reimbursed, and to provide to provide reasonable proof thereof to the WASPA Secretariat.

In addition, the Adjudicator has considered the position of Stouf Communications (Pty) Ltd and is reluctant to make a finding or impose a sanction against Stouf Communications (Pty) Ltd without giving it an opportunity to respond, in accordance with the *audi alteram partem* principle. Nevertheless, the SP and IP indicated that the Complaint was largely occasioned by the action, or inaction of Stouf Communications (Pty) Ltd. The Adjudicator accordingly refers this issue to the Secretariat for further investigation and to obtain the response of Stouf Communications (Pty) Ltd.