



## REPORT OF THE ADJUDICATOR

<b>WASPA Member (SP)</b>	iTouch South Africa (Pty) Ltd
	Cell C
<b>Telephone Network(s)</b>	MTN
	Vodacom
<b>Information Provider (IP)</b> (if applicable)	
<b>Service Type</b>	Content Downloads (Games, ring tones, wallpapers, pictures)
<b>Source of Complaints</b>	Competitor
<b>Complaint Number</b>	#0014 and #0015

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### Complaint

A complaint was received from a competitor of the SP, concerning an advertisement placed by the SP under its 35050 brand in the September 2005 issue of Salt Water Girl magazine and a "pencil case" insert placed in the same edition of the Salt Water Girl magazine.

The Secretariat conducted an investigation into the service offered by the SP.

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

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.

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### Investigation

The Secretariat received a response from the SP. The SP's response seemed to concede that the advertisements concerned might in fact breach the WASPA Code of Conduct, however any such breach of the WASPA Code of Conduct was inadvertent and occasioned by the lead times for media publication.

The Secretariat confirmed that the deadline for advertising in the Salt Water Girl magazine September edition was 8 August 2005, however the SP may have submitted the advertising prior to the deadline.

The SP submitted an example of its revised advertising, which is a significant improvement on the advertisement complained of in complaint #0014. It should be

noted that such advertisement nevertheless does not appear *prima facie* to comply with the requirement of Clause 6.2.5 of the WASPA Code of Conduct that the price should appear with all instances of the premium number display. As this was submitted as an example only and is not the subject of these complaints, no finding is made in respect thereof.

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## Decision

Clause 6.2.5 of the WASPA Code of Conduct contains three requirements:

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

Requirement 1 is not as objectively ascertainable as the other requirements. Subjective issues such as ease of visibility are more appropriately addressed by the WASPA Advertising Guidelines, which will specifically deal with issues such as font size. The Adjudicator regarded the “pencil case” insert as not being of breach of the WASPA Code of Conduct regarding ease of visibility, however the magazine advertisement (and particularly the font size used) was found to be in breach of the WASPA Code of Conduct requirement for ease of visibility. Requirements 2 and 3 are objectively ascertainable. The Adjudicator found that both advertisements do not comply with the requirement that the price should appear with all instances of the premium number display. Regarding the requirement for clear visibility, no breach of the WASPA Code of Conduct was found.

The Adjudicator upheld both complaints.

The Adjudicator has imposed the following sanctions in respect of the Complaints:

- Regarding the breach of the requirement that price should appear with all instances of the premium number display, the SP is:
  - formally reprimanded for its breach of the WASPA Code of Conduct; and
  - required to remedy such breach in future advertisements, having regard to advertising lead times for the Salt Water Girl magazine as well as the various other publications in which the SP’s advertisements may appear.
- Regarding the breach of the requirement for ease of visibility, the SP is ordered to pay a fine of R1 500. The Adjudicator has considered the effort and willingness displayed by the SP in ensuring that future advertisements do not breach the WASPA Code of Conduct in determining the amount of this fine (though no finding is made in respect of the example advertisement provided).

Fines are payable to the WASPA within five (5) working days of notification of this sanction. Should an appeal be lodged, the fine will be suspended until the determination of the appeal. Should the fine be upheld (in whole or in part, or

increased) the fine will be payable within five (5) working days of notification of the appeal finding.