



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Nashua Mobile
Telephone Network(s)	All
Service Type	Use of short code for commercial contact services
IP	Outsurance
Source of Complaints	Public
Complaint Numbers	#0044

Complaint

A complaint was received from a member of the public concerning an advertising billboard for a customer of the SP, using a short code provided by the SP as a commercial SMS contact channel.

The complainant alleged the following breach of the WASPA Code of Conduct:

- "I saw this sign for Outsurance just near Midrand on the highway and took a picture with my phone.
- The sign says that we must SMS to number 31713 - but no price is shown!!!!!!!!!!!!!!
- Proof is attached on this picture.
- Please take action!!!!

The following Clause of the WASPA Code of Conduct was considered:

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

Investigation

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

The Secretariat received a response from the SP indicating that:

- The SP as a WASP, is merely a "conduit" or distributor of data as received from our customers. Whilst the SP provides all WASP customers with the necessary information to comply with the WASPA Code of Conduct, as a service provider, the SP cannot be responsible for the data or information

transmitted by our customers. We can, however, comply with requests to cease disseminating offensive or illegal data upon request.

- As an analogy, the Advertising Standards Authority when investigating complaints does not lodge the complaint with the television station or advertising medium (such as magazines and newspapers), or even the advertising agency. The complaint is directed towards the actual advertiser - the "customer".
- The SP therefore similarly believes that it can merely act as a mediator or conduit in forwarding your complaint to our customer. We believe that the WASP should, in future, be contacted to provide the association with details of the offender in order for WASPA to contact the customer directly relating to complaints of this nature.
- With regard to the specific complaint in question, the number used by the IP is NOT a premium-rated line and any cellular telephone user making use of the number will only be charged normal cellular rates. We have, however, received confirmation from the IP that they will amend the advertising to correctly reflect this.

Decision

The WASPA Code of Conduct makes it clear (at Clause 3.9) that an SP is vicariously liable for the actions of its Information Providers, should the SP fail to take appropriate steps where an IP contravenes the WASPA Code of Conduct, namely: "The member must suspend or terminate the services of any information provider that provides a service in contravention of this Code of Conduct." This interpretation has been expressed by the Adjudicator in a number of decisions and upheld on appeal. In order for a SP to avoid liability it needs to show that it has informed its customers of the requirements of the WASPA Code of Conduct and the WASPA Advertising Guidelines and has taken appropriate action when a contravention of the Code is brought to its attention.

The picture supplied by the complainant is not sufficiently clear so as to indicate the lack of pricing information alleged. The submission of the SP in stating "We have, however, received confirmation from [the IP] that they will amend the advertising to correctly reflect this" does not amount to an admission as to the correctness of the complaint, however the SP does not deny the allegation of the complainant.

On the basis that the service is not premium rated, the potential harm to a consumer using the service of the SP to contact the IP is limited.

The complaint was submitted prior to the introduction of the WASPA Advertising Guidelines, which comprehensively and objectively bring finality to issues of this nature by indicating the size and position for pricing information in all advertising, including billboards and the like.

As the allegation of the complainant was submitted in good faith and not disputed, the complaint was accordingly upheld in respect of a breach of Clause 6.2.2 of the WASPA Code of Conduct.

In determining the sanction to be imposed in respect of the breach of Clause 6.2.2 of the WASPA Code of Conduct, the Adjudicator had regard to the fact that:

- The IP undertook to amend its advertising;
- There is limited potential harm to consumers; and
- The issue has been pre-empted by the WASPA Advertising Guidelines, intended to obviate issues of this nature and in effect as at the date of this adjudication but not at the date of the complaint.

The Adjudicator imposed the following sanction:

- The SP is required to ensure that its own advertising, as well as the advertising of its Information Providers, complies with the requirements of Clause 6.2.2 of the WASPA Code of Conduct and the WASPA Advertising Guidelines.