



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	ViaMedia
Information Provider (IP)	Xcite Mobile
Service Type	Internet Web Site Relating to the IP's Brand
Source of Complaints	Competitor
Complaint Number	#0047

Complaint

A complaint was received from a competitor of the SP regarding the IP's alleged failure to provide pricing on its Internet web site, located at www.xcitemobile.co.za.

The complainant referred to clause 6.2. of the WASPA Code of Conduct, however it is only clauses 6.2.2 and 6.2.5. which are relevant. They provide:

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

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.

SP Response

The SP provided the response of the IP, which indicates:

The complaint was unfortunately valid. This was a stupid oversight and not an intentional omission. It has been immediately rectified.

We have added clear pricing information -

- adjacent to the main number in the header;
- on the download instructions pop up and;
- to the Clubs page.

We can confirm that:

- there have been less than 20 downloads from the website and these are predominantly our own testing so the negative impact of the omission is limited.
- Our download price is the industry standard rate, at R5, so those users have not been charged an unreasonable amount.

We are also adding a list of specific compatible handsets (also forgotten), which will be live by the end of the week.

We apologise and appreciate the feedback. We hope that our efforts are sufficient to rectify issue and resolve the complaint. If not please let us know immediately.

Decision

The Adjudicator noted the IP's response through the SP and its admission of a breach of the WASPA Code of Conduct.

In particular, the Adjudicator expressed his appreciated to both the SP and the IP for:

- The honest and forthright manner in which they responded to the complaint;
- Providing the Adjudicator with detailed information concerning the complaint (in this case the number of downloads from the Internet web site and the price thereof); and
- Undertaking to rectify the breach and actually doing so; and
- Admitting to another error, which is *prima facie* another breach of the WASPA Code of Conduct.

In the instant complaint, the IP made a mistake, admitted it and then rectified its error. Unlike the majority of complaints reviewed by this Adjudicator, where the SP or IP attempt to excuse or obfuscate their breach of the Code, here the IP and SP have been honest. In addition, the Adjudicator noted that the WASPA Secretariat has limited capacity and is not able to investigate each and every complaint as thoroughly as may be desired. A number of situations have arisen where an SP or IP (either in an appeal or in correspondence) has complained that certain factors have not been taken into account by the Adjudicator in reviewing a complaint, however **these factors were not made known to the Adjudicator by the IP and/or SP in their response**. Rather than making a bald allegation, as is often the case, the IP through the SP has given a justification for its contentions and provided clear facts on which this report is based.

While the Adjudicator concurred with the IP that consumers may not have been prejudiced by the cost of the download, however such customers were not given appropriate information in choosing to download content from the IP's Internet web site.

The Adjudicator noted further that the changes to IP undertook to make to its Internet web site have been effected. The Adjudicator noted further that the complaint pre-dates the introduction of the WASPA Advertising Rules.

The Adjudicator accordingly found the IP to have breached clauses 6.2.2. and 6.2.5. of the WASPA Code of Conduct. No finding was made in respect of a breach of clause 6.3.1. of the WASPA Code of Conduct.

The Adjudicator imposed the following sanction:

- The SP is reprimanded for the breach of the WASPA Code of Conduct by the IP;

- The SP is ordered to refund those customers who downloaded content from the IP's Internet web site prior to the pricing being reflected on such Internet web site: and
- The SP is ordered to pay a punitive fine of R1 000 to WASPA.