



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Exactmobile
Information Provider (IP)	Not disclosed, appears to be BNT
Service Type	Pricing not clearly displayed in television advertisement
Source of Complaints	Public
Complaint Number	#0049

Complaint

A complaint was received from a member of the public concerning lack of clarity in pricing in the IP's television advertising. The complaint reads:

"Prices hidden in a TV advert! The service is advertised every Saturday night on ETV's adult program and there is NO price clearly visible on the service's advert. The service requires a user to send the name Jenna to 38581. The price is hidden in the terms and conditions below. The service costs R10 which is more expensive than most other services. The adverts do also NOT identify the company offering the service.

The TV adverts hide the price in the terms and conditions, no other indication of price is visible, these ads are clearly misleading the viewers."

The complainant referred to clause 6.2.5. of the WASPA Code of Conduct, which reads:

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 a response, indicating:

"This service is not run by Exactmobile. Exactmobile provides the billing for this company. The following is a response from the company running the ads.

Hi

Please can you forward the ADD to Gavin as requested and let him know that we are not aware of any Issues around the add as we have got no complaints from people using the service. The add will also be removed

from air and a new one with the new requirements will be loaded according to the WASPA thing. Also this can only be done next week."

Decision

The IP's response, submitted through the SP could be construed as an admission of a breach of clause 6.2.5. of the WASPA Code of Conduct. However the Adjudicator was not willing to make such a finding in the absence of a clear admission or a clear breach.

The Adjudicator expressed his disappointment that the SP has not been forthcoming in its response and has chosen to provide as little information as possible to assist the Adjudicator, rather than as much information as possible. The SP does not even deign to disclose the identity of the IP.

The Adjudicator was of the view that he did not have sufficient information to make a finding in this matter and accordingly requested the SP to:

- Confirm the identity of the IP;
- Provide a copy of all television advertisements flighted by the IP from the date of inception of the WASPA Code of Conduct up to the date of the complaint, being from 1 September 2005 to 19 October 2005;
- Provide a report indicating the schedule of such television advertisements during the aforementioned period;
- Confirm the pricing of the IP's service/s;
- Provide a copy or copies of the IP's "new" television advertisement referred to in the IP's submission above and flighted after 19 October 2005 but prior to the introduction of the WASPA Advertising Rules on 1 December 2005; and
- A report indicating the daily download volume from 1 September 2005 to 31 October 2005, which report may be consolidated by day and should not indicate the MSISDN details of customers requesting content from the IP.

The SP responded by indicating:

- This complaint is over 9 months old and specific information relating to this complaint are (sic) not available.
- The IP that was running this service is BNT. Due to other complaints which have been lodged against this company, and at the instruction of WASPA, Exactmobile terminated it's agreement with BNT some time back.
- BNT has already been fined over R130 000.00 for various services and as a result terminated all it's services.
- Exactmobile has attempted to contact BNT for the past 2 weeks. All telephone calls have gone unanswered and emails returned undelivered.

- All attempts to contact this company have failed.
- Exactmobile is therefore unable to provide a copy of this advertisement in question, a copy of the television schedule or any other information on BNT.
- The download volumes cannot be provided for this specific service, as it is unknown what requests originated from this advertising vs other advertising which the IP may have been doing.
- As a result of the long delay in this complaint being handled, the fact that Exactmobile no longer has a relationship with the IP at the instruction of WASPA, we requested that this complaint be closed with no finding due to insufficient information being available. Should the adjudicator proceed with this complaint and issue a fine, Exactmobile will be responsible for a fine, when Exactmobile did not flight the ad and was not responsible for the service. Exactmobile also has no recourse to recover a fine from the IP, as the IP's business appears to no longer exist.

The Adjudicator did not uphold this complaint due to the absence of necessary information to proceed therewith. Subsequent events have also provided WASPA with additional details regarding the IP, so the SP's contention that it cannot provide same are not considered further. The Adjudicator noted that:

- The decision not to proceed is not influenced by the SP's inability to recover a fine from the IP whatsoever, but purely due to the insufficiency of information. Had sufficient information been available, the SP's inability to pass on such a fine to the IP would merely be a factor to consider in imposing a sanction, but not a prohibition against the imposition of a financial sanction in the form of a fine; and
- The SP has shown a pattern of providing scant information in respect of complaints made against information providers offering services through it. In general this simply involves forwarding e-mail correspondence from the IP and on a number of occasions the SP had to be ordered to even provide the name of the IP. The SP is encouraged in future complaints to be more forthcoming and provide all relevant and appropriate information to the Secretariat, to enable complaints to be adequately dealt with.