



## REPORT OF THE ADJUDICATOR

**WASPA Member (SP):** eXactmobile

**Information Provider**

**(IP):**

(if applicable)

**Service Type:** Pick and choose premium digital content

**Complainant:** Martin Young, public

**Complaint Number:** 0060

**Adjudicator:** Kerron Edmunson

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### Complaint

The complainant sets out numerous examples of how pricing information has been mis-stated in the eXactmobile advertisement published in the October/November edition of Teen Zone magazine on page 47.

The complainant has not specified which sections of the Code he is relying on but it would appear that the complaint relates to an alleged contravention of section 6.2 (pricing of services) and specifically section 6.2.4 (pricing must not be misleading) of the WASPA Code.

I have not quoted the entire complaint, but only the issues raised:

1. it suggests all items in the ad will cost R5.00 as the heading states "sms the code to 33333 (R5/item)" but not all the items on the page cost R5.00, some cost substantially more;
2. an ad for karaoke does not display the price horizontally with the access number, but only on its side in very small print;
3. the ad for the crazy frog game states in an exploding star that the game costs R20.00 but in small print under the game it states "2xR20=R40/game" which is confusing;
4. at the bottom of the page, the number 32227 is shown in large print but in tiny print and shown sideways is a price which is not clearly visible and could be either R1 or R5, per sms.

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### SP Response

The SP has responded in great detail with reference to historical facts by way of background. I have omitted the explanation of the history of the advertisement which largely explains that the vagaries complained of resulted from a series of errors by the SP over a period of time.

The remainder of the response is summarised as follows (I have used quotes to reflect the response as accurately as possible):

1. "although the pricing of the game was changed underneath the PRS number, the banner was not changed. This was simply a typo. The correct pricing does, however, appear underneath the PRS number itself;
2. the ad does carry a strong mention of the number 33333 as this number is used extensively for TV advertising and is a part of our 'brand'. Where the price is different for some products, a new number is used within that section with the appropriate pricing next to the number...we can see how, at first glance at least, the use of 33333 at the top could be construed as applying to all the items on the page;
3. the use of different PRS numbers is not designed to surreptitiously make people spend more. The different numbers are used to cover the varying licensing costs of content;
4. the border to the crazy frog game and the karaoke sections are of a different colour. This again shows that we did not use 33333 at the top in order to mislead and we have attempted, despite the tight space in the ads, to further distinguish the services that carry different pricing;
5. eXactmobile has never received a single complaint from users claiming that our pricing is misleading despite us having used broadly the format for hundreds of previous ads. That said, we have run a query to determine how many people have so far mistakenly requested the crazy frog game on 33333 and the number of people affected is 6 (at time of writing). The number of people who mistakenly requested a phone karaoke item on 33333 is 20. Hence 26 people in total have made the mistake covered by the complaint, out of a total response to this advert of 9,942 so far;
6. as a courtesy to the 26 users who have been inconvenienced, we have sent them an explanation by sms and free of charge, the content they requested on 33333 and we will continue to honour 'mistaken' requests on 33333 for the remainder of the ad's life, ie another 8 weeks;
7. since the time this Teenzone ad was created we have already changed our ad style significantly to reflect the prices more clearly and we will further review the style to ensure there is nothing more we can do to make things as clear as possible."

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### **Consideration of the WASPA Code**

The General Provisions of the Code provide at:

1. section 4 (customer relations) that members are committed to honest and fair dealings with their customers, and in particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers;
2. section 6.2.4 (pricing of services) that pricing contained in an advertisement must not be misleading, and if multiple communications are required to obtain consent, 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.

Although the complainant has not stated on which section of the Code he is relying, this section appears to be the most appropriate in light of the complaint.

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## Decision

On the facts presented, and having studied the advert which is the subject of this complaint, it is clear that the SP has contravened all the provisions of the Code set out above in the manner alleged:

Advertisement	Section of the Code	Infraction
All items in the ad appear to cost R5.00 as the heading states "sms the code to 33333 (R5/item) but not all cost R5.00 – some cost substantially more.	Section 4 – pricing information for services has not been clearly and accurately conveyed to customers and potential customers; section 6.2.4 – pricing contained in an advertisement must not be misleading...	The pricing is both unclear and misleading – the 38882 service is R10, the crazy frog is R20 (see below). The heading does suggest that the menu of content is available at the same price, and the other prices which apply are difficult to read and poorly displayed.
An ad for karaoke does not display the price horizontally with the access number but on its side in very small print	Section 4 and section 6.2.	The pricing information has not been displayed clearly.
The ad for the crazy frog game states in an exploding star that the game costs R20.00 but in small print under the game it states R20XR20=R40/game	Sections 4 and 6.2	It is unclear whether the game costs R20.00 or R40.00 from the printed advertisement, and the highlighted star suggests that the cost is only R20.00 which is misleading
At the bottom of the page, the number 32227 is shown in large print but in tiny print and shown sideways is a price which is not clearly visible and could be either R1.00 or R5.00 per sms	Sections 4 and 6.2	The printing and font size of the text shown sideways next to the advertisement is so unclear as to be capable of several different interpretations. Not only is this misleading but it is not transparent, and customers are likely to be unclear about price and terms applying to the offering.

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## Sanction

Before making a decision on sanction I would like to note two things:

- (i) It is always valuable to recognise that one can make mistakes and that these mistakes can have adverse consequences for third parties and the person making the mistake. It is even more valuable to attempt to rectify the mistake in a pro-active way; and
- (ii) I am aware that some time has passed since the complaint was filed.

In the circumstances I do not consider it appropriate to require modification of the advertisement, however, the number of contraventions and the fact that they relate to pricing which is such a fundamental part of the Code, requires me nonetheless to apply a number of sanctions to ensure that these sorts of mistakes are avoided in the future.

eXactmobile is required to take note of the decision and to:

1. ensure that future advertisements do not breach the Code in the manner outlined above;
2. notify WASPA in writing of any further complaints received after the date of the complaint which I am addressing here within 5 (five) business days of this decision, take steps to grant relief to the affected customers, and confirm the steps taken to WASPA in writing within 5 (five) business days thereafter;
3. pay a fine to WASPA within 30 (thirty) days of the date of the decision of the amount of R26,000.