



REPORT OF THE ADJUDICATOR

WASPA Member (SP): Via Media (Pty) Ltd

Information Provider

(IP): Xcite Mobile
(if applicable)

Service Type: Subscription service

Complainant: Gavin Penkin, competitor company representative, director of eXactmobile

Complaint Number: 0062

Adjudicator: Kerron Edmunson

Complaint

The complainant states that the advertisement for downloads published in the You and Huisgenoot magazines dated 3 November 2005 by Xcite Mobile contravenes section 6.2 (pricing of services) and specifically section 6.2.4 (pricing must not be misleading) of the WASPA Code in that it:

1. "prominently states only R1,00 for members;
2. a typical user will not know what the membership is and will request an item per the codes supplied for the content;
3. the user will expect to pay R1.00 but in the fineprint it states that if you are not a member you pay R5.00".

SP Response

The SP has responded by stating that:

1. "the advert very clearly states the price for MTN, Cell C and non-members as R5.00;
2. this wording is within a centimetre or so of the entry code;
3. the entry is in Zurich font of over 80% the size of the entry code / greater than 15 points;
4. it is bold and unhidden;
5. it is in a special box dedicated to allowing it to stand out and be clearly seen and not confused in any way;
6. the advert states clearly that the R1.00 charge is ONLY for members (as Mr Penkin agrees);
7. it is clearly in a 'special' star utilized frequently in retail adverts to indicate a special, reduced price which would alert the users to the fact that this is something special and not the 'normal price';

8. the special star has been colour-coded yellow to match the membership header of the advert. We did this to allow users to clearly see the two are related and can get a thorough explanation of the clubs;
9. the advert has a club membership (subscriptions) section clearly labelled, explained and completely separate from the other sections of the advert to avoid any confusion”.

Consideration of the WASPA Code

The complaint focuses on the way in which pricing of non-subscription services is displayed when compared with the pricing of subscription services. The price of the service depends on whether or not access to content is provided in terms of a subscription (in which case it will cost R1.00 per item) or not (in which case it will cost R5.00 per item).

It is useful to note in general that section 4 (customer relations) of the Code provides 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.

Section 6.2 of the Code deals with pricing of services generally and section 6.2.4 (the section which is the basis for this complaint) provides 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.

Decision

Having reviewed the specific terms of the complaint and the advertisement, I am of the view that the SP has not contravened section 6.2.4 of the Code in the manner alleged, and I therefore dismiss the complaint for the following reasons:

Substance of the complaint	Advertisement
The advertisement states only R1.00 for members	True, but it also states that non-members, MTN and Cell C subscribers pay R5.00, both in the area of the code (where R5.00 appears in a star), in the section headed “Join a club”, and in the terms and conditions
A typical user will not know what the membership is and will request an item per the codes supplied for the content	The advertisement refers the reader to a section marked “Join a club”; and the reference to the R5.00 subscription fee appears 5 times within the advertisement with reference to the club membership, cost of subscription and entitlement
The user will expect to pay R1.00 but in the footprint it states that if you are not a member you pay R5.00	An obvious and substantial portion of the advertisement states that non-members pay R5.00 as set out in the two blocks above, this is not stated only in the terms and conditions, and this is repeated several times in the text.

As an aside, had the complainant brought his complaint under section 6.2.5, this finding may have been somewhat different.

Sanction

None