

REPORT OF THE ADJUDICATOR

WASPA Member (SP): VIA MEDIA

Information Provider

XCITE MOBILE (IP):

Service Type: SUBSCRIPTION SERVICE

Source of Complaints: WASPA MEMBER

Complaint Number: 0075

Complaint

The Complainant in this matter is Exact Mobile ("the Complainant") and the SP is ViaMedia ("the SP"). Both the Complainant and the SP are members of WASPA.

The Complainant filed a complaint on 14 November 2005 alleging that a television advertisement flighted by M-NET on behalf of the SP on 5 November 2005 ("the advertisement") breached sections 11.1.2 and 6.2.5 of the WASPA Code of Conduct ("the Code"). Specifically, the Complainant alleged that the advertisement "bundled" a request to join a subscription service with a request for specific content and, furthermore, that the advertisement stated that the content cost R1.00 but that in fine print in the corner of the advertisement the advertisement stated that the service was a subscription service charged at R5.00 per week.

The relevant sections of the Code that the Complainant alleged were breached by the SP read as follows:

- 11.1.2 Any request from a customer to a subscription service must be an independent transaction, with the specific intention of subscribing to a service.
- 6.2.5 The price for a Premium Rated Service must be clearly and easily visible in all advertisements. The price should appear with all instances of the Premium number display.

SP Response

The SP submitted its response to WASPA on 15 November in which it denied that the advertisement breached the WASPA Code. Specifically, the SP forwarded a response from its content provider, Xcite Mobile ("the Content Provider") in which it was stated that the keywords advertised for membership requests were reserved for the subscription service and did not result in the provision of any specific content.

Wireless Application Service Provider Association

Report of the Adjudicator

Complaint #0075

Furthermore, the Content Provider replied that the terms and conditions of the service, including pricing information were displayed in black on white contrast, in appropriately sized Zurich font, and, in the case of the subscription costs, for the full duration of the advertisement. The Content Provider conceded in its response that a consumer focus group suggested that the R1 pricing information in the price triangle was "too busy" and that the advertisement has subsequently been amended as the Content Provider agreed that this amendment would make the advertisement "just that much clearer".

Decision

Section 11 of the Code (dealing with subscription services in general) does not prohibit an advertisement for a subscription service from making reference to content downloads that may be available to subscribers of that service.

Section 11.1.2 does, however, require that customers cannot be subscribed to a subscription service in the same transaction through which they receive specific content. One of the practical effects of this provision is that a customer cannot request specific content in one transaction and being joined to a subscription service simultaneously.

Notwithstanding the above, confusion may, in certain cases, arise in the mind of a consumer where an advertisement advertises a subscription service and also indicates the availability of content to subscribers in the same advertisement. Where an advertisement causes confusion, it could be that a customer enters into a subscription transaction without the specific intent of doing so. An advertisement that is reasonably likely to result in such confusion would therefore breach section 11.1.2 of the Code which requires that a customer must have the specific intent of joining a subscription service.

Having viewed the advertisement in question, I am satisfied that the request to join the subscription service is not, as a matter of fact, bundled with the provision of specific content. I am also not convinced that the advertisement is misleading in the sense that it would cause persons to subscribe to the service without the specific intent of doing so. The complaint of a breach of section 11.1.2 of the Code is accordingly dismissed.

While I am satisfied that the price for the subscription service is visible in the advertisement and is displayed with all instances of the premium number display, I am not satisfied that the price for the subscription service is "easily and clearly visible" as required by section 6.2.5 of the Code. This finding is based on the reasons set out below:

- The equivalent price per individual content download is displayed in a comparatively larger font in a moving image while the weekly minimum price is displayed in a comparatively smaller font and at an angle of 45 degrees to the horizontal viewing plane.
- 2. The diagonal pricing information contains reference to the R1 per item charge in a considerably larger font size than the R5 per week charge.
- There is a limit to how much information a consumer can pay attention to at one time. A reasonable viewer's attention would be drawn to the moving

Wireless Application Service Provider Association

Report of the Adjudicator

Complaint #0075

images and larger horizontal pricing that appear in the advertisement and away from the angular display of the weekly price in the smaller font.

- 4. The advertisement contains other numerous moving graphic images that, each time they appear on the screen, would draw a reasonable viewer's attention away from the static pricing that appears throughout the advertisement or the temporary pricing information that appears at the foot of the advertisement.
- 5. The R1 per item charge that is displayed more prominently in the advertisement is not an actual charge that the consumer will pay, but an equivalent charge that a consumer would bear per item assuming he or she downloaded 5 items per week. The horizontal pricing that explains that additional content downloads are charged at a separate higher rate of R5 per download appears for only an approximate 5 seconds in both the "TONE" and "LOVE" components of the advertisement and in the smallest font of all font sizes used in the advertisement.

Viewed as a whole, I am of the opinion that, whilst the pricing information is displayed, not all of it is "easily" visible as is required by section 6.2.5 of the Code. The requirement in section 6.2.5 of the Code that pricing must be "easily" visible means that it must be capable of being noticed by a consumer with little or no effort. This is not the case in the advertisement in question.

The complaint of a breach of section 6.2.5 of the Code is accordingly upheld.

Sanctions

The SP is fined in the amount of R20 000, R14 000 of which is suspended for twelve months from the date of this Adjudication provided that the SP does not breach the provisions of section 6.2.5 of the Code in that period. The amount of R6 000 is to be paid to WASPA within five (5) working days of notification of this sanction.