



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	iTouch
Information Provider (IP) (if any)	YoTV
Service Type	Subscription
Source of Complaints	Competitor
Complaint Number	#0099

Complaint

The Complaint, received on 6 December 2005, is stated as follows:

“The presenter offers ring tone content to be requested on the number 35050. The presenter states the cost is R3.00, when it is R5.00. The text on the screen also says R3.00 when it should be R5.00.

The number 34353 is also displayed on the screen for users to SMS comments. There is no pricing displayed for this service.”

The Complaint relates to an advertisement appearing during a YoTV Programme shown on TV 1 on Saturday 26th November at 09:00.

The Complaint should properly be viewed as two distinct sub-complaints, viz.:

- A. Advertising of an incorrect price in respect of use of the number 35050; and
- B. Failure to advertise a price in respect of use of the number 34353.

SP Response

On 28 January 2006 the SP responded as follows:

“With reference to the complaint, we respond as follows:

1. 35050 is an extremely popular and well known brand. It enjoys significant marketing spend and particularly markets the fact that 35050 as a short code is R5.

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2. However, 35050 were original on a R3 band. At that time the current Brand manager did a small joint venture with YoTV.
3. When the networks agreed to move 35050 to R5, we immediately changed all marketing to reflect same.
4. However, it would seem YoTV didn't receive or act on the Communication to them to simply amend the presenter's version.
5. We haven't received any complaints from any consumers in this regard.
6. We apologies for this and have immediately rectified the version of the presenter to ensure the correct price point is mentioned.

We thank Gavin for bringing this to our attention.”

There is no response to the Complaint insofar as it relates to the failure to provide any pricing in respect of use of the number 34353.

Sections of the Code considered

The following sections of version 3.2 of the WASPA Code of Conduct were considered:

“6.2. Pricing of services

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

6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, 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

The SP's response contains an admission to what amounts, *prima facie*, to a breach of Section 6.2.2 alternatively Section 6.2.4 of the Code. For the purpose of this Adjudication it is found that the SP has breached Section 6.2.2 in that a price other than the full retail price was advertised. The possibility of the same conduct also constituting a breach of Section 6.2.4

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does not, in this instance, justify a finding that there have been two distinct breaches of the Code.

The essence of the defence raised by the SP is that YoTV failed to act on a communication sent to them by the SP advising that pricing in respect of 35050 had increased from R3 to R5. It is noteworthy that the SP states that this communication was to require YoTV to “simply amend the presenter’s version”. This does not address the fact that the incorrect price (R3) was also displayed in the text at the foot of the advert. In the same light the SP avers that it immediately took steps to amend the presenter’s version without any reference to the need to amend the text.

The significance of the above is that the visual material for the advertisement would have been provided directly through the SP or its agency and therefore would not have been dependent on any conduct on the part of YoTV for its contemporaneity or correctness. Even if this is not the case it remains the responsibility of the SP to ensure that it and Information Providers utilising their services are in continuous compliance with the Code.

The SP in its reply does not, unfortunately, provide any dates in respect of the changing of the 35050 rating or its communication to YoTV or any other corroboration of its claims.

I therefore find that the SP has breached Section 6.2.2 of the Code.

In considering an appropriate sanction I have taken into account the taking of prompt corrective action by the SP. The lack of any consumer complaints is not a mitigating factor and there is no evidence of the number of consumers who may have unwittingly paid a higher rate than they were led to believe was applicable.

I have also had reference to the Adjudication reported under Complaint Numbers #0014 and #0015 which involved the SP and bear certain similarities to the instant issue. In this regard it can be highlighted that the defence raised by the SP in this matter is not an isolated case of a breach of the Code being allegedly attributable to changes in marketing material or pricing or difficulties with lead times.

The order made under the abovementioned Adjudication contains the following passage:

“The Adjudicator has considered the effort and willingness displayed by the SP in ensuring that future advertisements do not breach the WASPA Code of Conduct in determining the amount of the fine...”

SPs are urged to pay greater attention to ensuring that such changes are timeously and efficiently communicated to affected parties.

With regard to the sub-complaint relating to the failure to display any pricing in connection with use of the 34543 code it is not apparent from the papers before the Adjudicator that the SP is in anyway connected to the advertisement or provision of services through this number. From a viewing of the television programme in question it appears rather that this number is integrally related to the programme itself and that the service provided is provided by YoTV.

I therefore wish to refer this aspect back to the Secretariat for verification. If the SP is indeed providing a service through the 34543 number then I would further request that the Secretariat provide the SP with an opportunity to respond directly to the specific allegation raised in the Complaint within 5 days and that the matter thereafter be re-referred to the Adjudicator.

In the circumstances the following ruling is made:

1. The Complaint in respect of the advertising of incorrect pricing for the 35050 number is upheld.
2. In respect of the breach of Section 6.2.2 the SP is ordered to pay a fine of R5 000.

Fines are payable to WASPA within 5 (five) days of notification of this sanction. Should an appeal be lodged, the fine will be suspended until the determination of the appeal. Should the fine be upheld (in whole or in part) or increased the fine will be payable within 5 (five) days of notification of the SP of the appeal finding.