



REPORT OF THE ADJUDICATOR

WASPA Member (SP): TelePlay South Africa

Information Provider

(IP): Teletouch IVR

(if applicable)

Service Type: Adult service – pricing

Complainant: Member of the public

Complaint Number: 0113 and 0114

Adjudicator: Kerron Edmunson

Complaint

These 2 complaints concern the same companies and relate to the same alleged contravention of the Code so I have considered them together.

The complainant has faxed through to WASPA 4 pages of advertisements dated 11 January 2006, 2 from the Citizen and 2 from the Star. The complainant has also sent a complaint by email explaining the matter complained of. The complainant states that there are “several Adult services WASP’s who are currently advertising falsely by NOT saying “VAS rates apply” in their ads, or saying “Free” or saying “Std cell rates” etc. etc. I have copies of more than 10 ads that are in direct breach of the WASPA code of conduct. I would like to fax a copy of these ads to you.”

The two services advertised in each newspaper are stated to be available at “Std VAS rates”. This wording is preceded in the advertisement complained of in 0114 by the words “Free Free Free – 24H” which wording also appears in one of the advertisements complained of in 0113.

SP Response

The SP has responded in the identical fashion to both complaints and states “we deeply apologise for the confusion our ads have created with our customers. The ads in question are old ads from last year that slipped past our media section and made it to the newspapers. We can assure you that this will not happen again in the future, as of next month the new ads with the correct wording will appear...we guarantee it will not happen again.”



Consideration of the WASPA Code

Section 4.1.1 of the Code (provision of information to customers) states: “Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.”

Section 4.1.2 of the Code provides that “Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.”

Section 6.2 (pricing of services) provides at:

- 6.2.2 – all advertisements for services must include the full retail price of that service.
- 6.2.3 – pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.
- 6.2.4 – pricing must not be misleading...
- 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.

Since the advertisements complained of were published after 1 January 2006, the WASPA Ad Rules also apply, and specifically sections 1.3 (Adult services) and 4.3.12 (Pricing of services). Whilst the complaint is not specifically about the advertising of the adult service, it is relevant to consider section 1.3:

1.3.1: if the ads used to advertise any Adult Content themselves contain Adult Content, these ads are restricted to Adult Media. Ads referred to any Adult Content are restricted under certain conditions. An age verification system must be used for access to any Adult Content. A warning that users must be 18 years or older to use a service must be shown.

1.3.2: any services that would or should only be restricted to Adults – which may include Adult Content Services – or where it would be undesirable for Children to have access to those services because of the potential Adult nature of the service, must be indicated as being Age Restricted, e.g. adult content, content that does not necessarily fit the definition of Adult Content, but which may contain images, audio or text that is obscene or otherwise unsuitable for access and consumption by Children.

4.3.12: Show component, bearer and total cost. Cannot use term Standard Rate when no free/discounted SMS/Minutes cannot be utilised.

Overview: the display text must show the full or potential cost of access for fully obtaining the advertised Content and/or service.

Background: ...a Standard Rate is a rate that is part of an in-bundle tariff which a user would ordinarily pay for domestic person to person communication pursuant to the specific terms and conditions of their service agreement with a mobile network operator. No ‘revenue-sharing’ applies. Thus, where free/bundled SMSs/Minutes cannot be utilised or where the tariff for an Access Channel differs from the in-bundle tariff for any user pursuant to the terms or conditions of the service agreement that a user has with a mobile network operator, then the term “Standard Rate: may not, from implementation of the Ad Rules, be used under those circumstances. Instead the following must be used:

For IVR lines: “VAS Rates apply. Free Minutes do not apply.”

For Premium Rates SMSs: “Premium Rates apply. Free SMSs do not apply.”

Note: this notation must be used irrespective of the value of an SMS (eg 50c/OBS) if the SMSs/Minutes are not available free or in a bundle.

Decision

The complainant has not specified the sections of the Code that he or she is relying on. However, it is sufficiently clear from the complaint that the IP has failed to comply in part or at all with the provisions of the Code relating to pricing, as listed above. The advertisements also breach the pricing provisions of the Ad Rules and the rules applying to Adult Content:

1. The statement "Std VAS rates" closely situated with the "Free" wording is likely to cause confusion.
2. The reference to "Std VAS rates" is similarly confusing. These services are not provided on rates which can be said to be "standard" as VAS rates are specific to networks and services. The Ad Rules provide specifically that the term "Standard Rate" may not, from 1 January 2006 be used where free/bundled SMSs/Minutes cannot be utilised or where the tariff for an Access Channel differs from the in-bundle tariff for any user under the terms and conditions of that user's agreement with a mobile network operator. The wording "Premium rates apply. Free SMSs do not apply" or "VAS Rates apply. Free Minutes do not apply" should be used.
3. All information regarding the rates applicable to the service should be disclosed in the advertisement.
4. Price should be disclosed with the premium rate number.

The advertisements in fact contravene other sections of the Code but I have restricted this finding to the pricing provisions.

The SP has admitted to breaching the provisions of the Code and made a full apology, but has also admitted that similar advertisements would have been available in the previous year – also breaching the Code. This has been taken into account in deciding a sanction.

The pricing provisions of the Code and the Ad Rules are clear and unambiguous, and apply to all services including adult services. The complaint is upheld.

Sanction

- The SP is ordered to correct all advertisements so as to fully comply with the relevant provisions of the Code with immediate effect.
- The SP is also ordered to pay a fine of R10,000 to WASPA within 5 days of the date of this adjudication.
- Finally, the SP is ordered to pay a fine of R10,000 to WASPA suspended for 12 months from 11 January 2006 provided no other complaints are received against the SP.