



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Always Active Technologies
Information Provider (IP) (if any)	N/A
Service Type	Content Download, Pricing
Source of Complaints	Public
Complaint Number	#0172

Complaint

The Complaint was received by e-mail on 15 February 2006 (and not through the www.waspa.org complaint form) and read simply as follows:

“I am complaining that this advertisement does not have any price.”

The Complainant provided a copy of the allegedly offending advert which I what is commonly referred to as a “GoogleAd” and read as follows:

“Vodacom Upgrades

Check your Upgrade Date SMS ‘Upgrade’ to 35601

www.myupgrade.co.za“

SP Response

The SP’s response read, in part, as follows:

“This complaint is completely valid and we have taken this matter up with our client and it was an oversight on their part.

The client is working on remedying this matter and will ensure that the correct wording will appear on the advert.

If one links through to the site (<http://www.elitemobile.co.za/>) one will notice that the wording "sms's charged at R3 each" does appear but it should also appear in the Google keyword advert.

We will also send a mail of apology to the client and inform them that the relevant action will be taken to sort this problem out."

The SP thereafter provided evidence of its apology to the Complainant.

Sections of the Code considered

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

4.1. Provision of information to customers

4.1.1. 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.

6.2. Pricing of services

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

The following sections of Version 1.6 of the WASPA Advertising Rule were considered:

9.2.2.2 Position of Access Cost Text

- For each unique access number, the full and final cost of the access must be displayed immediately below, or above, or adjacent to the unique access number or Content access code in a non-serif font.
- If the ad and/or offer is on a third party web site as a graphic or display text, then the display text with pricing and contact info must be displayed on immediately below, above or to the side of the access number to show the FULL cost to consumer. This includes for example, text-based ads placed on Google-based (or similar) advertisements.

Decision

The Response from the SP, constituting an admission of a breach of the sections of the Code and Advertising Rules set out above, is accepted.

It has been established in a number of previous adjudications¹ that SPs, as members of WASPA, are obliged to take reasonable steps to ensure that their customers, and the customers of their customers, comply with applicable provisions of the Code. The responsibility of ensuring compliance ultimately falls to the WASPA member.

While I can accept that the breach as aforementioned was due to an oversight on the part of the SP's client it is nevertheless a clear breach of an explicit provision and the negligence of the SP's client cannot excuse the breach. It is not clear from the SP's Response what measures were taken to ensure compliance with the aspects of the Code and Advertising Rules which were breached and, in the absence of this information, I am unable to find that reasonable measures were indeed taken in the instant case.

The Complaint is accordingly upheld and it is found that the SP has breached Sections 4.1.1 and 6.2.2 of the Code read with Section 9.2.2.2 of the Advertising Rules.

In considering an appropriate sanction I have taken into account the honesty of the SP in its response as also the prompt and direct corrective action taken.

The SP is issued with a reprimand in respect of the breach of the Code outlined in this Report.

¹ See for example <http://www.waspa.org.za/code/download/0045.pdf>