



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Exactmobile
Information Provider (IP) (if any)	Unknown
Service Type	Competition Service (Promotional Material for)
Source of Complaints	Public
Complaint Number	#0280

Complaint

A complaint was received from a member of the public concerning a television advertisement for a Competition Service provided by the IP through the SP. The complainant alleges:

"There was an ad on Saturday 8 April on channel 36 where users were required to sms 'EX' to 40021 to win a full body make over.

The pricing (R20) is tiny and is hidden in the small print of the ad at the bottom. Here is a clear example of a company trying to sidestep the WASPA regulations by putting in pricing in very small font and hiding it in the Terms and Conditions at the bottom of the ad so that it is not seen by the users. As it was so hard to find the pricing info, I am not sure whether the pricing was on the screen for the entire ad.

The pricing is supposed to be in the top right hand corner in a large font (I think size 15 Zurich)

This is not just a case of the company concerned making a mistake, have been in the industry it is a clear attempt to hide the (very high) price of the competition."

The complainant referred to the WASPA Advertising Rules. As it appears that the advertisement in question is flighted independently of a programme, Section 2 of the WASPA Advertising Rules was considered, which provides:

2.2.2 COST OF ACCESS TEXT DISPLAY RULES

Trigger:

At any display of, or mention by a voice-over, of a unique access number

Display Length:

100% of the length of the advertisement

Display Text Font:

'Zurich' font

Display Text Font Size:

18 points MINIMUM

Display Text Font Position:

In a visible block or triangle in a top corner of the screen in the Title Safe Area (see diagrams)

Display Text Font Colour:

Contrasted colour superimposed on the block/triangle

Block/Triangle Colour:

Contrasted colour, behind the display text

Display Text Type:

- Text must be static
- No Caps (except for the first letter of the first word) or italics may be used as the display font for the word subscription.
- No italics may be used as the display font for the price text.
- No text must be placed around the access cost text that may obscure clear reading
- The access cost text must not be positioned or formatted in a manner where it may be obscured by other text or visual information that may be displayed as part of the ad
- The access cost must not be part of a colour scheme that may obscure easy reading of complete details of the access cost
- The access cost text must not be obscured by any background flashing or other visual animations that practically and objectively obscures easy reading of complete details of the cost

Example:

R10/SMS

or

R10/week Subscription.

The relevant Section of the WASPA Advertising Rules must be read in conjunction with Section 6. of the WASPA Code of Conduct, which provides:

6. Advertising and pricing**6.1. WASPA advertising guidelines**

6.1.1. In addition to the provisions listed below all members are bound by the WASPA Advertising Guidelines [a reference to the WASPA Advertising Rules], published as a separate document.

6.1.2. The latest version of the WASPA Advertising Guidelines will always be available on the WASPA web site.

6.2. Pricing of services

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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.

SP Response

The SP provided a response, indicating:

The ad was run a few times on DSTV on Channel 36 and did not receive a good response due to the limited audience. This is the only complaint that has been received about this ad.

On receiving the complaint, Exactmobile notified the Information provider. The ad was immediately removed from broadcasting. A new ad is being created which will comply with the WASPA advertising guidelines.

A further response was received from the SP, which indicated:

The attached is further information from Mnet, that the ad that was run was the incorrect ad. The ad with the correct pricing was supplied and Mnet made a mistake by running the wrong ads.

Can this information please be taken into account when this ruling is done.

*From: ******

Sent: 26 April 2006 04:32 PM

*To: ******

*Cc: *****; ******

Subject: Incorrect flighting of Extreme Makeover Commercial

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I'm afraid we flighted the incorrect Extreme Makeover commercial last Friday night on the Series channel which is mirrored and flights again the next day. Oracle/Mnet take full responsibility for this error as we were requested to flight a new commercial coded KTN/20/120/E and unfortunately an incorrect tape number was entered and the old EXT/20/758E code was flilghted.

We plan to wipe the old commercial so this will not happen in future.

Please would you give me a ring next week I would be interested to find out how WASPA monitor commercials.

Decision

Both responses received amount to an admission of a breach of Section 2.2.2 of the WASPA Advertising Rules, read in conjunction with Section 6.1.1. of the WASPA Code of Conduct.

The Adjudicator noted that this complaint has been assigned to him on an urgent basis, as the SP is withholding revenue from the IP pending the resolution of the

complaint (as is its right), with potentially severe financial consequences for the IP. Considering the complaint backlog, the Secretariat and the Adjudicator were reluctant to deal with this complaint as a matter of urgency, however made an exception in this case. The urgent treatment of this complaint was at the request of the IP and in no way had regard to the identity of the SP.

The Adjudicator noted the factual inconsistency between the initial response and the subsequent response, as furnished by the SP. Neither the IP nor the SP gave any justification for the blatant inconsistency. The Adjudicator noted that he is unable to resolve such inconsistency on the submissions before him, in the absence of an explanation from either the IP or the SP.

The Adjudicator was supplied with additional information by the Secretariat, which indicated that the Secretariat had communicated with the IP on or about 29 March 2006. Such communication concerned a different complaint, which was successfully resolved using the informal complaint process contemplated in the WASPA Code of Conduct. During the course of such communication the Secretariat referred to the WASPA Advertising Rules and the IP claimed ignorance thereof. Having been given further information concerning the Advertising Rules by the Secretariat, the IP undertook to amend the pricing information in its advertisement in accordance with the Advertising Rules.

The Adjudicator did not regard the aforementioned factual inconsistency as an aggravating factor in imposing a sanction for the admitted breach of the WASPA Advertising Rules, however he considered the information provided by the Secretariat as confirmation of the subsequent submission of the IP, through the SP and was willing to mitigate the sanction on the basis of such submission, in which the error of a third party was alleged as the reason for the admitted breach of the advertising rules. In considering an appropriate sanction, the Adjudicator noted the fines previously imposed for pricing irregularities in advertisements and particularly where these are occasioned by errors of third parties. The Adjudicator further considered that such sanctions were based on subjective interpretations of advertisements and were not based on the objective standards set by the WASPA Advertising Rules.

The Adjudicator expressed his surprise that the SP made a submission which submission is factually inconsistent. The Adjudicator is further aware of the processes of the SP from previous Adjudications. The SP obtains written confirmation from each of its Information Providers that they have received copies of the WASPA Code of Conduct and Advertising Rules and that the Information Providers agree to abide by them. The SP further binds each Information Provider to the withholding of revenue in the event of a complaint against the SP in respect of the service of the IP, in order to secure an indemnity granted by the Information Provider in favour of the SP in respect of any fine imposed in respect of the complaint. In the light of the foregoing, the Adjudicator expressed his surprise at the IP's indication to the Secretariat that it was unaware of the provisions of the WASPA Advertising Rules.

The Adjudicator noted that the SP was less than forthcoming to the Secretariat in its response, as is common in other responses submitted by the SP. The SP did not indicate whether the IP was aware of the WASPA Code of Conduct and Advertising Rules, or had received a copy thereof. The SP did not indicate if the IP had signed the confirmation and indemnity referred to above. The SP did not even indicate the identity of the IP. In the light of the facts noted by the Adjudicator, the Adjudicator

encouraged the SP to be more forthcoming in its responses to complaints, particularly when these relate to the services of Information Providers.

As such, the Adjudicator imposed the following sanction:

- The SP is ordered to notify the WASPA Secretariat of the identity of the IP;
- The SP is reprimanded for its failure to ensure that the IP complied with the WASPA Advertising Rules;
- The SP is ordered to terminate the competition service in question and not to resume any such service on behalf of the IP unless the relevant advertising complies with the WASPA Advertising Rules; and
- The SP is ordered to pay a fine of R7 500 in respect of the breach of Section 2.2.2. of the WASPA Advertising Rules, read in conjunction with Section 6.1.1. of the WASPA Code of Conduct.