



REPORT OF THE ADJUDICATOR

WASPA Member (SP): Miranetworks

Information Provider

(IP): Jamba
(if applicable)

Service Type: Pricing for subscription services

Complainant: eXactmobile (Pty) Ltd

Complaint Number: 0291

Adjudicator: Kerron Edmunson

Code version: Code v4.3, Ad Rules v1.6

Complaint

The complainant submitted a complaint to WASPA concerning a Jamsta advert run on etv on the weekend of 22-23 April 2006.

The complainant based the complaint on sections 6.2.2, 6.2.3, 6.2.4 and 6.2.5 of the Code in this way:

- i) "6.2.2: all advertisements for a service must include the full retail price of the service. The ad clearly shows R30 per month subscription. In the terms and conditions which is hardly readable, it says R10./SMS. A consumer would be expecting to pay R30/month and get all the content for R30. According to the fine print you will be paying R30 per month plus R10.00 per item. No mention is made of how you will get this content.
- ii) 6.2.3: pricing must not contain hidden costs. See description in clause 6.2.2.
- iii) 6.2.4: pricing must not be misleading. The consumer is led to believe that for R30 per month they will get all the content. The R10 per item in the fine print is misleading.
- iv) 6.2.5: the price for a premium rated service must be clearly visible. The R30 is clear, however the R10.00 per item is hidden in the terms and conditions."

SP Response

The SP made a full response in writing on 16 May 2006 which I will quote almost in its entirety as it addresses each point raised by the complainant.

By way of background, the SP states that "Jamba, the content provider in question, aired five different television ads for subscription services during the weekend of 22/23 April. The ads, are identified as: Sweety, Frog, Charts, Movietheemes and Ying

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Yang Twins. The services were all priced at R30 per month for the subscriber with WAP access required.”

The SP’s detailed response followed:

“Ad point 1, although the complaint does not specify any particular ad during the weekend in question, we can confirm that all ads aired carried the following “fine print” – in line with requirements (font size etc) laid out by the WASPA Code of Conduct:

“Jamster Int.Sarl. R10/SMS + WAP charges. Premium rates. Free SMS do not apply. This is a subscription service, currently only available to Vodacom customers. You will be automatically charged R30 (3 SMS) every month until you unsubscribe..WAP required. Only available for compatible handsets. For help, contact info@jamster.co.za or 0800991481. Errors charged. We may contact you with offers from time to time. All prices includes VAT. Obtain bill payers consent before using this service”.

No where in this copy, or in the voiceover, is there any mention of an additional R10 per item over and above the R30. The confusion the complainant may refer to is the question of “3 SMS’s” which is how the R30 is collected from the subscriber each month. The copy above is intended to explain how the R30 is collected from the subscriber. The ad was freely tested with a range of subscribers and the resulting copy was understood to have the most clarity. We do not feel this is a legitimate complaint but would appreciate any feedback from the complaints committee on this point.

Ad point 2 – the complainant states that the pricing in the ad contains hidden costs. As you will see from the ad the full retail cost is advertised and mention is made that WAP access is required. This is not a legitimate complaint.

Ad point 3 – the complainant states that the pricing is misleading. This is not the case. No where in the ad is there any mention of an additional R10 per item that the consumer has to pay. This is not a legitimate complaint.

Ad point 4 – the full price payable by the consumer is clearly stated both in print and in the voice-over as per code of conduct requirements. We contend that there is absolutely no ambiguity here. This is not a legitimate complaint.

Based on the above responses, we do not believe the complaint to be valid For your reference, attached is a copy of one of the ads run over the weekend in question.”

Consideration of the WASPA Code

The complainant has set out the relevant provisions of the Code which I am restating here:

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 content.

6.2.4: pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain consent, then the advertised price must

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include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

6.2.5: the price for a premium-rated service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display.

Decision

To aid in assessing this complaint I have included the various elements in a table:

Code	Complaint	SP response
6.2.2: all advertisements for services must include the full retail price of that service.	The ad clearly shows R30 per month subscription. In the terms and conditions which is hardly readable, it says R10./SMS. A consumer would be expecting to pay R30/month and get all the content for R30. According to the fine print you will be paying R30 per month plus R10.00 per item. No mention is made of how you will get this content.	<p>Although the complaint does not specify any particular ad during the weekend in question, we can confirm that all ads aired carried the following "fine print" – in line with requirements (font size etc) laid out by the WASPA Code of Conduct:</p> <p><i>"Jamster Int.Sarl. R10/SMS + WAP charges. Premium rates. Free SMS do not apply. This is a subscription service, currently only available to Vodacom customers. You will be automatically charged R30 (3 SMS) every month until you unsubscribe. WAP required. Only available for compatible handsets. For help, contact info@jamster.co.za or 0800991481. Errors charged. We may contact you with offers from time to time. All prices includes VAT. Obtain bill payers consent before using this service".</i></p> <p>Nowhere in this copy, or in the voiceover, is there any mention of an additional R10 per item over and above the R30. The confusion the complainant may refer to is the question of "3 SMS's" which is how the R30 is collected from the subscriber each month. The copy above is intended to explain how the R30 is collected from the subscriber. The ad was freely tested with a range of subscribers and the resulting copy was understood to have the most clarity. We do not feel this is a legitimate complaint but would appreciate any feedback from the complaints committee on this point.</p>
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	Pricing must not contain hidden costs. See description in clause 6.2.2.	The complainant states that the pricing in the ad contains hidden costs. As you will see from the ad the full retail cost is advertised and mention is made that WAP access is required. This is not a legitimate complaint.

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receiving content.		
6.2.4: pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain consent, 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.	The consumer is led to believe that for R30 per month they will get all the content. The R10 per item in the fine print is misleading.	The complainant states that the pricing is misleading. This is not the case. Nowhere in the ad is there any mention of an additional R10 per item that the consumer has to pay. This is not a legitimate complaint.
6.2.5: the price for a premium-rated service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display.	The price for a premium rated service must be clearly visible. The R30 is clear, however the R10.00 per item is hidden in the terms and conditions.	The full price payable by the consumer is clearly stated both in print and in the voice-over as per code of conduct requirements. We contend that there is absolutely no ambiguity here. This is not a legitimate complaint.

- i) 6.2.2: the retail price would appear to have been disclosed.
- ii) 6.2.3: WAP charges and charges per SMS have been stated.
- iii) 6.2.4: the R10/SMS charge and the 3 SMS requirements should be stated closer together to avoid any confusion about how the price might apply.
- iv) 6.2.5: the full price appears to have been stated with the premium-rate number, however the finding in (iii) applies here too.

Sanction

The SP has complied quite substantially with the requirements of the Code, however some improvements could be made in future to avoid any confusion regarding pricing. I have listed these improvements in my decision.

The SP is ordered to take note of the findings above and to amend all advertisements accordingly in future.

The SP is also ordered to refund any service fees paid by users who lodged complaints in relation to charging which substantially echo the complaint and to notify WASPA in writing within 10 days of publication of this finding, that this has been done, and if it has not been done, to give reasons why not.