



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Mira Networks
Information Provider (IP)	DCCDM Limited
Service Type	Content Downloads
Source of Complaints	Competitor
Complaint Number	#0305

Complaint

A complaint was received from a competitor of the SP concerning an advertisement for content downloads under the "Redtonez" brand placed in Heat Magazine dated 13 - 19 May using short code 39309.

The complainant indicates:

Section 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.

In this ad the pricing is placed in the top right hand corner. The short code is used multiple times in the ad with no pricing. As the content is charged at R15.00 which is 3 times the norm, the consumer would believe he is paying R5.00 and only afterwards find out the actual cost is R15.00 the Magazine dated 13 - 19 May using short code 39309

The following Clause of the WASPA Code of Conduct was considered:

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.

Investigation

The Secretariat conducted an investigation into the service offered by the SP.

The Secretariat received a response from the SP indicating that:

We are deeply apologetic if we have in any way contravened the code in any way. We believed that the ads were compliant and that the price point was clear to all consumers with the price point being very clearly advertised at the

top of the advert and at the bottom in the T's & C's. We do not believe the consumer was misled in any way.

Our creative agency utilized copy from 35050 by iTouch in Soccer Laduuuuuma, 35050 in TV Plus magazine and Gozomo.co.za on 31996 in TV Plus Feb edition. Whilst the agency was provided the code of conduct they unfortunately misinterpreted it, using the example copy as guidelines. This has subsequently been rectified and further copy changed.

We would like to highlight the fact that we have had no consumer complaints with regards to price point and only received 3 complaints in total from consumers who ordered incompatible content with their handset to whom we have provided replacement content free of charge.

In addition, the SP responded:

What I would like to point out regarding this complaint is section 5.2 of the advertising guidelines

5.2 COST & T&C INFORMATION DISPLAY RULES

For each unique access number, the full cost of the access must be displayed immediately below, or above, or adjacent to the unique access number or content access code in a manner that is easily visible and readable.

SMS/MMS: The display text must indicate the TOTAL cost involved in obtaining the full service, and if applicable, also the number and component cost of the SMS's required for full access, and the potential for additional bearer charges.

Decision

From the advertisement, it is clear that the IP did display the price information for the service, albeit at the top of the advertisement and in the terms and conditions, but not next to each instance of the premium number display, as required by the WASPA Code of Conduct. Unfortunately the complainant has failed to reference the WASPA Advertising Rules and as such, they cannot be considered with regard to a possible contravention and the Adjudicator must rely on Clause 6.2.5.

Clause 6.2.5 of the WASPA Code of Conduct contains three requirements:

- 1 The price for a premium rated service must be easily visible;
- 2 The price for a premium rated service must be clearly visible; and
- 3 The price must appear with all instances of the premium number display.

Requirement 1 is not capable of objective assessment and as such, a subjective test must be used. The Adjudicator regarded the advertisement as a whole and considered particularly the font size and colour used,. Having regard to these factors, the Adjudicator was of the opinion that the pricing information was not as easily visible as it could be, but nevertheless still easily visible in the advertisement.

The Adjudicator is of the view that requirement 2 can be objectively ascertained and that the pricing information was clearly visible in the advertisement.

Requirement 3 is similarly capable of objective assessment and here the Adjudicator found that the SP has, in its advertisement, failed to display pricing information “with all instances of the premium number display” as required and as such is in breach of requirement 3 of Clause 6.2.5 of the WASPA Code of Conduct.

The complaint was accordingly upheld in respect of a breach of Clause 6.2.5 of the WASPA Code of Conduct.

In determining the sanction to be imposed in respect of the breach of Clause 6.2.5 of the WASPA Code of Conduct, the Adjudicator had regard to the fact that the:

- SP has changed its advertisements to comply with the WASPA Advertising Guidelines;
- issue has been pre-empted by the WASPA Advertising Rules, however the complainant has not cited a possible contravention and as such and based on considerations of procedural fairness, such contravention cannot be considered. The SP does mention the Advertising Rules in passing, however this is not sufficient to proceed on this basis..

The Adjudicator accordingly imposed the following sanction, following the decision in Complaints #0014 and #0015:

- The SP is formally reprimanded for the IP’s failure to display pricing information relating to the service with all instances of the premium number display in the advertisement for the service; and
- The SP is ordered to pay a fine of R1 000,00 to WASPA.

Fines are payable to the WASPA within five (5) working 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 five (5) working days of notification of the appeal finding.