



REPORT OF THE ADJUDICATOR

WASPA Member (SP): MyBeat Interactive Technologies (Pty) Ltd

Information Provider

(IP): 5fm
(if applicable)

Service Type: Pricing for premium-rate SMS

Complainant: Member of the public

Complaint Number: 0346

Adjudicator: Kerron Edmunson

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

Complaint

The complainant submitted the text of a radio spot aired on 3 July 2006 by DJ Gareth Cliff on Radio 5fm which described a special competition which required a text to the short code 33345 to enter. The complainant states that the spot did not mention how much the cost of the SMS was. The complainant also stated that the website at <http://www.suninternational.co.za/> did not specify the price either.

The complainant cites sections 4.1.1, 6.2.2 and 6.2.5 of the Code in support of the complaint.

SP Response

The radio station and SP acknowledge that pricing was omitted in the spot.

The SP has responded that they have fully investigated the situation with 5fm and that the radio station had committed to mention pricing each time a competition is aired in future. The SP was not able to check the spot prior to it being aired but they had provided 5fm with a summary of the requirements to be applied on each occasion in relation to premium-rated SMS, including pricing.

Consideration of the WASPA Code

I have had regard to the provisions cited by the complainant, which are:

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.

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

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.

Decision

The complainant has submitted a complaint in relation to advertising in two different media. I do not have a copy of the website advertisement, and I am therefore not able to make a finding in this regard and do not therefore consider 6.2.5 to be applicable in this case.

In relation to the 5fm spot, the parties have acknowledged that they failed to mention pricing in their respective capacities. Whilst 5fm have generously absolved the SP of the blame and it is clear that the SP has taken very sensible steps to educate and assist its clients in applying the rules, accidents do happen.

Nonetheless, the Code has in fact been breached in that:

1. pricing information for services was not clearly and accurately conveyed to customers and potential customers as required under 4.1.1; and
2. advertisements for services did not include the full retail price of the service under 6.1.2.

Although the Ad Rules are also applicable in this case, as the parties acknowledge that they have not complied with the Code, it goes without saying that they have also failed to comply with the Ad Rules in relation to pricing, and the sanction reflects this.

Sanction

Taking the candid response of the SP and 5fm into account, I find as follows:

1. in relation to the breach of section 4.1.1 of the Code, the SP is ordered to pay a fine in the amount of R2,000 to WASPA; and
2. in relation to the breach of section 6.1.2 of the Code, the SP is ordered to pay a further R1,000 to WASPA,

both payments suspended for a period of 6 months from the date of publication of this decision provided that no further complaints are received against the SP or 5fm where the SP represents 5fm, for a similar offence. If further complaints are received, the SP shall pay the total sum of R3,000 to WASPA within 5 days of the date of receipt by WASPA of the complaint and WASPA shall notify the SP accordingly and no further notice shall be required for payment.