



REPORT OF THE ADJUDICATOR

WASPA Member (SP) Integrat
Information Provider (IP) eBlockwatch
Service Type Premium rated SMS
Source of Complaints Public
Complaint Number #0366

Complaint

A complaint was received from a member of the public concerning the announcement of a premium rated number during a radio programme without pricing information being provided.

The complainant indicates:

I wish to lodge a complaint against the owner of short code 33930

This short code was mentioned on an interview on radio 702 by a man called Andre Synman from "eblockwatch" on the Tim Modise show at 11.27am 19 July 2006, but without indicating ANY price of this short code.

He indicated people should sms this short code in respect of getting information from eblockwatch via sms.

Please take action against this.

The following Clauses of the WASPA Code of Conduct were considered:

6.1. **WASPA advertising rules**

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

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

6.2. **Pricing of services**

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 must appear with all instances of the premium number display.

The WASPA Advertising Rules provide (in respect of radio advertising):

3.2.2 CRITERIA & TIMINGS FOR VOICE-OVER/S ANNOUNCING COST AND T&C:

- If an access number is used as part of an interactive radio talk-show programme and/or is consistently used as part of that Radio Stations activities, then the cost of the access number and that (if applicable) it is premium rated must be announced at least once every 5 minutes if used consistently as part of station programming.

SP Response

The Secretariat received a response from the SP indicating:

We have contact the Complainant via email, and he responded with the email attached. We have also consulted with the Information Provider and [were] advised as follows:

The IP, Andre Snyman was requested to appear on the 702 TIM Modise radio show, for his contribution in fighting crime in South Africa. The show is dedicated to South African hero's. At the end of the interview listeners had the option to phone in and ask questions. One of the listeners phoned in and asked how to go about joining the service. Andre Snyman, the IP, replied with instructions on how to activate the service. He can't recall if he mentioned the cost to the listener or not. He also cannot recall to exactly how many listeners he gave the number during the show. If need be, he can request the Radio Station to extract the recording from the archives and send it in for analysis by the Adjudicator. This will need to be written to a CD, should it be required.

Analysis of the received information:

- 1) *The complainant lodged a complaint against the customer for an interview he participated in on the radio, and not for advertising.*
- 2) *It should be taken into consideration that during the conducting of a radio interview, the IP might have found it difficult to in real time remember the content of the WASPA code or consider the code. This IP's business is to Fight Crime using mobile technology as a means, and not providing WASP services. They therefore do not on a daily basis deal with the WASPA code, or rules as do WASPS. We however believe that the IP did not intentionally leave the cost out of his comment. All eblockwatch standard radio advertising, print advertising, and WEB site information contains all costs. So according to our analysis, it was not pre-meditated or intentional.*
- 3) *The Complainant admitted that it was a talk show and not traditional advertising.*
- 4) *We believe it is unreasonable to hold the IP responsible for this event.*

We have taken the following actions to remedy the situation:

- 1) *The IP offered to refund the customer the R1.50, should this be a requirement.*
- 2) *We have spoken to the IP, and reminded him to always mention the price, even during an interview, which he has taken note of.*

The SP included the following e-mail correspondence with the complainant:

On 7/27/06, the SP wrote:

>

*> Dear *****,*

>

*> Please provide me more detail on the complaint you lodged. E.g. The exact
> wording the customer used during advertising his service. Was it an advert
> that was running, or was the number said during the interview?*

>

On 7/31/06, the complainant responded:

Hello

Mr Snyman was interviewed by Tim Modise on 702 (it was not a conventional recorded advertisement).

Towards the end of the interview, Tim Modise asked Mr Snyman how people should contact him.

Mr Snyman then read out his SMS shortcode number as his contact number, and then again read this out a number of times.

Never once did he indicate how much this number costs, I still don't know how much it costs.

Decision

The Adjudicator referred to previous decisions concerning his ability to deal with a complaint where the specific section of the WASPA Code of Conduct (or in this case the WASPA Advertising Rules) is not referenced.

Neither the WASPA Code of Conduct nor the WASPA Advertising Rules define advertising. It is on the question of whether the interview with Mr Snyman was advertising or editorial content, that this complaint hinges.

Clause 3.2.2 of the WASPA Advertising Rules further appears to apply to promotional use of an access number by the radio station itself, rather than by an invited guest appearing in an editorial context.

Having considered various dictionary definitions of "advertising" the Adjudicator was of the view that the definition provided by the Advertising Standards Authority of South Africa in its Code of Conduct is the most apt, as it is one adopted by the advertising and media industries themselves. Such definition provides:

4.1 "advertisement" means any visual or aural communication, representation, reference or notification of any kind –

4.1.1 which is intended to promote the sale, leasing or use of any goods or services; or

4.1.2 which appeals for or promotes the support of any cause.

Promotional content of display material, menus, labels, and packaging also fall within the definition. Editorial material is not an advertisement, unless it is editorial for which consideration has been given or received.

The word "advertisement" applies to published advertising wherever it may appear. It does not apply to editorial or programming publicity.

The Adjudicator is of the view that the sentence "The price must appear with all instances of the premium number display" in Clause 6.2.5 of the WASPA Code of Conduct, must be read in the context of the Clause itself, which indicates that this applies in respect of advertising use of the premium number.

The Adjudicator concurs with the SP that the use of the premium number by Mr Snyman was in an editorial context, such editorial was not paid for and as such does not constitute "advertising".

The complaint is not upheld as neither Clause 6.2.5 of the WASPA Code of Conduct, nor Clause 3.2.2 of the WASPA Advertising Rules, place a requirement on pricing disclosure when used in an editorial context. Such disclosure is obviously desirable and the SP's endeavours in this regard are noted.