



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Exactmobile
Service Type	Content Downloads
Source of Complaints	Public
Complaint Number	#0374

Complaint

A complaint was received from a member of the public concerning a credit card sized advertisement distributed by the SP. The complainant indicates:

"Exactmobile credit card sized advertisement contravenes your advertising rules.

It shows a number 0822 302 222 for 24 hours support but does not indicate that VAS rates nor free minutes do not apply as is required.

This I believe contravenes clause 8.3.6 of your rules:

"Advertisers must include a helpline number or a working web site address that has direct applicability and linkage to the advertiser

If an IVR or SMS system using any premium rated or VAS rates channel provided by or through a licensed mobile operator is used for contacting the advertiser or as a helpline access, then the fact that this access number is Premium Rated or uses VAS rates must be indicated next to the access number.

Eg "Helpline 08x-xxx-xxxx. VAS Rates. Free Minutes Do Not Apply."

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

2.18. A "premium-rated service" is any service charged at a higher rate than the standard rate set by the network operator for that particular service.

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

6.2.2. 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 that content.

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.

In addition, the following provisions of the WASPA Advertising Rules were considered:

Below-The-Line Marketing:

Includes but is not limited to any marketing material that includes Promotional Flyers/Leaflets, CD's, Flash Drives, Promotional Stickers, Scratch cards, Business-card sized leaflets, Small Z-cards, Promotional materials and products, including promotional materials printed on/displayed on any FMCG products. e.g. executive gifts, cool drink tins, beer cans, bottle tops, wrappers, boxes etc

VAS:

Value Added Services - any Content Services or similar which may incur usage charges that may be higher than the Standard Rate set by the network operator for any particular Access Channel.

VAS (Value Added Services) Rate:

In relation to IVR Access Channels only, any rate that is not part of an in-bundle free minute tariff and which may be higher than the standard rate set by the network operator for that particular Access Channel.

8.1 SCOPE

Applies to all Below-The-Line marketing material visible to the general public where Access Channels are displayed.

Some examples include, but are not limited to:

- Promotional Flyers/Leaflets
- CD's
- Flash Drives
- Promotional Stickers
- Scratch cards
- Business-card sized leaflets
- Small Z-cards
- Promotional materials and products, including promotional materials printed on/displayed on any FMCG products. e.g. executive gifts, cool drink tins, beer cans, bottle tops, wrappers, boxes etc

(NOTE: this is not an inclusive list. Any Below-The-Line promotional material is covered)

8.3.6 CONTACT DETAILS:

Provide web site address AND helpline number/shortcode // Contact details must be displayed as part of the T&C details.

- Advertisers must include a helpline number or a working web site address that has direct applicability and linkage to the advertiser
- If an IVR or SMS system using any premium rated or VAS rates channel provided by or through a licensed mobile operator is used for contacting the advertiser or as a helpline access, then the fact that this access number is Premium Rated or uses VAS rates must be indicated next to the access number.

- Eg "Helpline 08x-xxx-xxxx. VAS Rates. Free Minutes Do Not Apply."

Investigation

The Secretariat received a response from the SP indicating that:

Section 1.3.6 of the Advertising guidelines states that advertisers must provide a helpline number OR working web site address. In this ad both have been provided so users can get help if they need it. It is an omission that the clause "VAS rates apply. Free minutes do not apply" is excluded. This was due to the size of the card on which the ad has been printed. The entire card is the size of a credit card.

This omission will be corrected in future advertising.

Decision

In terms of Clause 6.1.1. of the WASPA Code of Conduct, the SP has bound itself to the WASPA Advertising Rules. As the WASPA Advertising Rules contain no basis for complaint or sanction for contravention, it is through Clause 6.1.1. of the WASPA Code of Conduct that the complaint must be considered.

A credit card size advertisement will fall into the category of "below the line advertising" in terms of the WASPA Advertising Rules and as such subject to Section 8 thereof (as indicated by the complainant). The SP erroneously refers to Section 1 of the WASPA Advertising Rules, which applies to television advertisements. This error is understandable as each of the Sections of the WASPA Advertising Rules is substantially similar, with minor alterations to deal with the specific media type specified in such section.

The SP admits the contravention of Section 8.3.6 of the WASPA Advertising Rules and by way of explanation indicates that such omission is due to the size of the advertisement. It then undertook to remedy such omission in future. The SP's explanation was not accepted, as the size of the advertisement is a limitation imposed by the free choice of the SP. The SP has the election of printing a larger advertisement, if it is unable to fit the pricing in as required, or the election to remove some of the content items advertised to make space for pricing information.

The Adjudicator accordingly determined that the SP breached of Clause 6.1.1 of the WASPA Code of Conduct, in contravening Section 8.3.6 of the WASPA Advertising Rules.

The Adjudicator further considered Clauses 6.2.2., 6.2.3. and 6.2.5. of the WASPA Code of Conduct.

There is no definition of the term "service" in the WASPA Code of Conduct and as such, the term must be interpreted broadly and would include a help line service offered by the SP. As such, the SP's failure to provide the pricing thereof constitutes a contravention of Clauses 6.2.2. and 6.2.3. of the WASPA Code of Conduct.

There is no indication that the rate charged for accessing the SP's helpline is charged at a rate higher than the standard rate charged by the network operators for calls to a mobile cellular number and as such, the service would not be a "premium-rated service". As such, there is no possible contravention of Clause 6.2.5. of the WASPA Code of Conduct.

However, as the rate charged is "not part of an in-bundle free minute tariff" it does constitute a service charged at a VAS (Value Added Service) Rate.

As the breach of Clauses 6.2.2 and 6.2.3. of the WASPA Code of Conduct were not mentioned in the complaint and the SP has accordingly not had an opportunity to respond thereto and as the breach overlaps the breach of Clause 6.1.1. of the WASPA Code of Conduct in its entirety, sanctions were regarded as inappropriate in respect of the breach of Clauses 6.2.2 and 6.2.3. of the WASPA Code of Conduct.

In determining the sanction to be imposed in respect of the breach of Clause 6.1.1. 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 Rules;
- The SP has not averred in any way that the omission of pricing was unintentional and its explanation in relation to the size of the advertisement was not accepted by the Adjudicator.

The Adjudicator accordingly imposed the following sanction, following the decision in Complaints #0014, #0015 and #0305:

- The SP is formally reprimanded for the IP's failure to comply with the WASPA Advertising Rules; and
- The SP is ordered to pay a fine of R2 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, both the reprimand and the fine will be suspended until the determination of the appeal. Should the decision be upheld and the fine imposed be confirmed (in whole or in part, or increased) the fine will be payable within five (5) working days of notification of the appeal finding.