



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Exactmobile
Service Type	Content Download
Source of Complaints	Competitor
Complaint Number	#0376

Complaint

A complaint was received from a competitor of the SP concerning an advertisement being shown by the SP on DSTV. The complainant states:

An advert currently running with high frequency on DSTV (a number of times every night - e.g. it was noticed twice on DSTV Channel 41 on 26/07/06 during 1 hour of casual tv viewing, it was seen a number of times on other days too but these weren't specifically recorded), advertises a PucMan mobile game. One is asked to send the keyword "Pucman" to the R20 number 40020. It is very obvious that the price is purposely obscured where shown and is not shown for much of the advert and specifically in sections where the short code is displayed and the voice repeats the instructions. The terms and conditions are also completely illegible due to their tiny size. This advert contravenes the WASPA code of conduct in many respects. These are listed below.

A copy of the adverts will be supplied as an MPeg or on a DVD.

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

Reason:

- *In substantial portions of the advert the display of an access number (40020 a R20 premium rate short code) is not accompanied by the price or terms and conditions. Also where these are displayed, they are completely incorrect in almost every respect i.e.*
 - o *Positioning, Font, Size, contrasting colours, time of display*
- *The majority of the required information is missing or completely illegible e.g.*
 - o *Additional bearer charges (WAP)*
 - o *Vas and or PR SMS's – free messages don't apply*
 - o *Vat included.*
 - o *Call Centre number*
 - o *Bill payers permission*
 - o *Errors billed*
 - o *Etc*

- *It is quite clear that the adverts intention is to obscure the price and terms.*

Section contravened- 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.

Reason:

- *There is no mention of WAP charges or not visible due to the size of the terms and conditions.*

Section contravened- 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.

Reason:

- *The price is not at all visible in some instances where the PR number is displayed.*
- *The price is anything but easily and clearly visible, where displayed.*
- *It is reasonably to assume that the price, where displayed, has been intentionally disguised to look like part of the background graphics of the game advertised.*
- *It is quite clear that the originators intention is to obscure the price.*

Section contravened- 6.2.6. Unless otherwise specified in the advertising guidelines, the name of the WASP or the information provider providing the service must appear in all advertisements for premium rated services.

Reason:

- *This is not there or not visible.*

Section contravened- 6.3.1. For services such as MMS, that have specific handset requirements, advertisements must make it clear that the customer needs to have a compatible handset that has been correctly configured to use that service.

Reason:

- *This is a java game requiring not only WAP and Java but is handset specific. It's not available to all handsets. Handset dependency is not communicated in the advert or is not visible.*

Section contravened- 7.1.1. The terms and conditions for children's services must indicate that the service should only be used with the permission of the child's parent or guardian.

Reason:

- *Not there or not visible.*

Section contravened- 7.1.2. The terms and conditions for children's services must indicate that the service should only be used with the agreement of the person responsible for paying the phone bill.

Reason:

- *Not there or not visible*

The complainant then indicated:

I've really struggled to get this right but I finally have a passable mpeg of the advert. It's unfortunately from a few seconds into the advert as I hit record a

few seconds late. I will attempt to get the whole thing, which I will send through if I succeed.

Please note that I'm afraid once I played the recorded advert on my PC's LCD screen, the price and other info displayed much better. On a TV tube is simply looks like blobs of white and no detail can be discerned. I now see that 2 sms's are required and the price is actually R40 not R20 as I believed previously. I tested another TV to ensure it wasn't just my TV and there too, the price and terms are indecipherable. I also can now make out the text "Free minutes don't apply" which I wasn't able to see before. Even though I now cannot dispute that the price is there for a bit and might be visible to viewers with LCD screens, viewers with a normal TV would not and the majority of the complaint still holds. The terms are way too small the, the price is disguised as part of the game and very difficult to see on a normal TV.

It might be useful to add the above to the original complaint as it makes it more accurate.

The complainant then sent a further copy of the advertisement with the following message:

Here is the complete advert as promised. I hope you can read this format (mp4). It was the only one that rendered the file to a reasonable size and quality.

Again I need to emphasise that the pricing and terms in the advert, when displayed on an LCD display is clear although small and disguised, but on a TV tube is illegible.

The Adjudicator considered the following provisions of the WASPA Code of Conduct:

2.7. "Children's services" are those which, either wholly or in part, are aimed at, or would reasonably be expected to be particularly attractive to children.

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

6.2.3. 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.

6.2.6. Unless otherwise specified in the advertising guidelines, the name of the WASP or the information provider providing the service must appear in all advertisements for premium rated services.

6.3.1. For services such as MMS, that have specific handset requirements, advertisements must make it clear that the customer needs to have a compatible handset that has been correctly configured to use that service.

7.1.1. The terms and conditions for children's services must indicate that the service should only be used with the permission of the child's parent or guardian.

7.1.2. The terms and conditions for children's services must indicate that the service should only be used with the agreement of the person responsible for paying the phone bill.

The following provisions of the WASPA Advertising Rules were considered:

2.2.2 COST OF ACCESS TEXT DISPLAY RULES

Trigger:

At any display of, or mention by a voice-over, of a unique access number

Display Length:

100% of the length of the advertisement

Display Text Font:

'Zurich' font

Display Text Font Size:

18 points MINIMUM

Display Text Font Position:

In a visible block or triangle in a top corner of the screen in the Title Safe Area (see diagrams)

Display Text Font Colour:

Contrasted colour superimposed on the block/triangle

Block/Triangle Colour:

Contrasted colour, behind the display text

Display Text Type:

- Text must be static
- No Caps (except for the first letter of the first word) or italics may be used as the display font for the word subscription.
- No italics may be used as the display font for the price text.
- No text must be placed around the access cost text that may obscure clear reading
- The access cost text must not be positioned or formatted in a manner where it may be obscured by other text or visual information that may be displayed as part of the ad
- The access cost must not be part of a colour scheme that may obscure easy reading of complete details of the access cost
- The access cost text must not be obscured by any background flashing or other visual animations that practically and objectively obscures easy reading of complete details of the cost

Example:

R10/SMS or
R10/week
Subscription

2.2.3 T&C TEXT DISPLAY RULES

Trigger:

At any display of, or mention by a voice-over, of a unique access number

Display Length:

- Minimum 10 seconds
- If applicable, of the 10 seconds display time for T&Cs, a minimum of 5 seconds must be allocated to informing the user that they will be subscribing to a subscription service.

Display Text Font:

'Zurich' font

Display Text Font Size:

15 points MINIMUM

Display Text Position:

On bottom edge of title face of the screen

Display Text Type:

- No CAPS-only or Italics-only text is permitted for the T&C font.
 - The T&C text must be static and horizontal for the requisite minimum display time, changing as is necessary to show all the T&Cs in equal time proportion
 - The T&C text may not scroll on the screen, either right to left, left to right nor any other direction.
 - The T&C text must not be positioned or formatted in a manner where it may be obscured by other text or visual information that may be displayed as part of the ad
 - The T&C must be formatted so that each sentence is distinct. Each sentence must end with a period.
 - The T&C text must not be part of a colour scheme that may obscure easy reading of complete details of the T&C
 - The T&C text must not be obscured by any background flashing or other visual animations that practically and objectively obscures easy reading of complete details of the T&C text.
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SP Response

The SP provided the following response:

The Mobile Fun content service as advertised on DSTV is provided by Exactmobile

Having viewed the ad on TV as well as on a PC, the pricing is clearly visible. The terms and conditions as well as all other information is presented as required under the WASPA ad guidelines. The complaint is therefore based on the complainants subjective opinion of the advertisement.

The following information as supplied by the complainant ... contradicts the original complaint. The complainant states ...[the SP proceeded to quote from the complainant's second message (above)].

From the above the complainant now admits that the information is actually visible. The advertising guidelines further states that the pricing must be placed in a special box or triangle on a top corner of the screen. In this case the pricing is placed in the left corner section of the screen in a square box. The pricing also falls within the area as displayed in an example within the advertising guidelines.

The most important information namely the pricing within the ad is clearly visible. The ad also prompts users to Press the OK button on their DSTV remote to go to Mobile fun where further information on this game plus other content is available.

Having viewed a large number of TV ads, including those of the complainant ..., it is impossible to clearly see the wording of the Terms and Conditions in any TV ad. It is therefore the responsibility of the advertiser to offer the consumer a quality service and to offer the consumer an alternative product should the consumer make a mistake or not have a compatible handset. Even

to refer the consumer to a different media channel such as a web site or call centre to check handset compatibility does not protect the consumer.

Adjudicator's Decision

At the outset, the Adjudicator recognised the complainant's honesty in providing the electronic copy of the advertisement, which is the subject of this complaint and acknowledging that viewing this advertisement on a different screen yielded a different result.

The Adjudicator rejected the SP's *ad hominem* attack on the complainant and found no contradiction in the complainant's communications. Indeed, the SP's reference to the complainant's advertisements has no place in the WASPA Code of Conduct process, as it is the SP's advertisements that are at issue in this complaint, not those of the complainant. The SP can (and indeed has) lodge complaints in respect of the advertisements of other WASPA members, should it believe they breach the WASPA Code of Conduct and/or Advertising Rules.

The Adjudicator found no justification for the complainant's contention that the advertisement is for a "children's service".

The Adjudicator noted the SP's comment "...it is impossible to clearly see the wording of the Terms and Conditions in any TV ad". This comment is extremely valid as many advertisements which are fully compliant with the requirements of the WASPA Advertising Rules, may nevertheless contain wording (both price and terms and conditions) that are wholly or partly illegible on most television screens. This comment is taken as a valid criticism of the WASPA Advertising Rules and not as an admission of any wrongdoing on the part of the SP.

Based on the copy of the advertisement supplied and the complainant's own reaction having seen this advertisement on a different screen, the complaint was not upheld.

The Adjudicator recommended to the WASPA Management Committee that the television advertising section of the WASPA Advertising Rules be amended in the following respects:

- Pricing information (total cost) should be given in any a voice over, as well as in text on screen;
- The font used for text pricing information (total cost) should be in a font no smaller than the font used for the access number; and
- Detailed terms and conditions may be omitted if reference is made to an easily accessible mechanism to access such terms and conditions and such terms and conditions do not differ significantly from the commercial norm of the WASP industry. It is not practical to include detailed issues, such as handset compatibility, in a television advertisement and providing for this in the Advertising Rules creates a false sense of security while providing little or no additional protection for consumers.