



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Worldplay (Pty) Ltd
Information Provider (IP)	Hela Network CC
Service Type	Subscription Service
Source of Complaints	Referral by the Advertising Standards Authority of South Africa
Complaint Number	#0380

Complaint

This report emanates from a query received from the Advertising Standards Authority of South Africa (“ASASA”) to the Wireless Application Service Providers’ Association (“WASPA”).

For purposes of processing, this query has been assigned a complaint number, however the remaining processes regarding complaints in terms of the WASPA Code of Conduct have not been followed. As such, this report does not constitute a finding of a WASPA Adjudicator and is merely an evaluation of the WASPA Code of Conduct and Advertising Rules applicable to the ASASA query. This report does not constitute legal advice, but merely an overview of the sections of the WASPA Code of Conduct and Advertising Rules applicable to subscription services.

The ASASA query emanates from a consumer complaint regarding advertising for a subscription service offered by the IP through the SP and advertised on television, as well as the information available on the IP’s Internet web site (www.biblewhereur.com). The complainant then refers to the advertisement for a subscription service offered by a different information provider (in the second case, Fresh Mobile), through another service provider (Cellfind). Both service providers’ are WASPA members.

The consumer does not clearly indicate the basis of his complaint and in his reference to the second advertisement gives no basis whatsoever, merely inserting a “screen shot” of the television advertisement. A reading of the complaint and particularly the tone thereof, indicates that the consumer has a general concern regarding the advertisement of subscription services, including, inter alia:

- Pricing of subscription services; and
- The provision of information regarding a subscribers ability to unsubscribe from a subscription service.

WASPA Code of Conduct and WASPA Advertising Rules

WASPA is aware of the problems caused by the lack of consistency regarding the promotion of wireless application services generally and subscription services in particular. Subscription services are particularly attractive to wireless application service providers as they generate ongoing revenue from a customer, rather than single "one off" transactions. Some of the marketing techniques used by service providers (largely internationally, but locally as well) to promote subscription services have been controversial.

This is one of the reasons for the introduction by WASPA of its Code of Conduct and Advertising Rules. Copies of both the Code of Conduct (version 4.6) and the Advertising Rules are attached for the information of ASASA. As these are lengthy and possibly complex for persons not versed in the wireless applications industry, certain elements of the WASPA Code of Conduct are set out below.

Excerpts from the WASPA Code of Conduct

This document is a code of practice governing the members of the South African Wireless Application Service Providers' Association (WASPA). It is binding on all members and contains accepted procedures to be followed in the event of a complaint lodged against any WASPA member.

1.1. About WASPA

WASPA is an independent, non-profit organisation representing the interests of organisations providing mobile application services in South Africa. The Association aims to provide a neutral forum for members to address issues of common interest and interact with industry stakeholders, network operators and government bodies. WASPA aims to ensure that end-users receive world-class services and industry participants earn a fair return on their investments. The association was founded in August 2004.

Membership of WASPA is voluntary. Voting members are required to have an existing business relationship with one or more of the network operators. All members are required to accept the WASPA Code of Conduct and related procedures as binding.

1.2. Objectives of the Code of Conduct

The primary objective of the WASPA Code of Conduct is to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services. The Code aims to equip customers and consumers with a mechanism for addressing any concerns or complaints relating to services provided by WASPA members, and a framework for impartial, fair and consistent evaluation and response to any complaints made.

The Code of Conduct also sets standards for advertising mobile application services, and includes a framework for the provision of adult services, to ensure adequate protection of children from potentially harmful content.

2.11. A "customer" is a user of a mobile cellular telecommunications service that has indicated a willingness to access or utilise a service provided by a wireless application service provider.

2.12. An "information provider" is any person on whose behalf a wireless application service provider may provide a service, and includes message originators.

2.13. A "member" is a member in good standing of WASPA.

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2.21. A "subscription service" is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.

2.23. A "wireless application service provider" is any person engaged in the provision of a mobile service, including premium-rated services, who signs a WASP contract with a network operator for bearer services enabling the provision of such services.

3.9. Information providers

3.9.1. Members must bind any information provider with whom they contract for the provision of services to ensure that none of the services contravene the Code of Conduct.

3.9.2. The member may suspend or terminate the services of any information provider that provides a service in contravention of this Code of Conduct.

3.9.3. The member must act in accordance with the WASPA complaints and appeal process and if appropriate, suspend or terminate the services of any information provider.

4. Customer relations

4.1. Provision of information to customers

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.

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

4.1.3. Each member must provide their full contact details on the member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address.

4.1.4. Members must make the terms and conditions of any of their services available to customers and potential customers, on request.

4.1.5. Members must have a complaints procedure allowing their customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

4.1.6. Members undertake to inform their wireless application service customers that they are bound by this Code of Conduct. Members also undertake to make these customers aware of the WASPA complaints procedure and the mechanism for making a complaint, should any customer wish to do so.

4.1.7. Members' web sites must include a link to the WASPA web site and/or this Code of Conduct.

6. Advertising and pricing

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

6.2.1. All advertised prices must include VAT.

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.

6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

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.

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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.

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6.3. General provisions

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.

6.3.2. For services which are likely to have a shelf-life of three months or more, a statement must be included in any advertisement that the information given is correct as at the date of publication, and that date must also be stated.

6.3.3. Promotional material must not be of a nature that unduly encourages unauthorised calls or use of services.

11. Subscription services

11.1. Manner of subscription

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services".

11.1.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be bundled with a request for a specific content item.

11.1.3. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

11.1.4. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

11.1.5. Subscription services with different billing frequencies should not have a subscription mechanism likely to cause a customer to accidentally subscribe to a more frequent service.

11.1.6. Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian do to so.

11.1.7. Once a customer has subscribed to a subscription service, a notification message must be sent to the customer containing the following information:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider's contact information.

11.1.8. Once a customer has subscribed to a subscription service, neither the amount and frequency of the charges nor the frequency of the service may be increased without the customer's explicit permission.

11.2. Customer support

11.2.1. Assistance, such as 'help' information, for subscription services must be easily available to customers, and must not be limited to a medium that the customer is unlikely to have access to.

11.3. Termination of a service

11.3.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.3.2. All subscription services must have a readily available unsubscribe facility which costs no more than one rand.

11.3.3. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.

11.3.4. Members must ensure that the termination mechanism is functional and accessible at all times.

It should be noted that subscription services have given rise to a number of complaints in terms of the WASPA Code of Conduct and ASASA may access decisions by various of the WASPA Adjudicators concerning subscription services from the WASPA Internet web site and specifically at http://www.waspa.org.za/code/complaint_idx.shtml .

It should further be noted that WASPA is actively and continuously refining its Code of Conduct and the section dealing with subscription services has been amended recently and is undergoing further review at the time of this report.

Bearing in mind that many of the requirements of the WASPA Code of Conduct are based on requirements that may be subjectively evaluated, the WASPA Advertising Rules were introduced to provide objective criteria that WASPA members must adhere to in their advertising practices. These rules are likewise attached. The WASPA Advertising Rules contain some general rules and then indicate the application of such general rules to various advertising media (such as print, television, radio, Internet web sites and the like). Each media section is intended to be capable of being read independently of the remaining sections and the rules applicable to the advertising of subscription services on television are set out below. It should be noted that these Rules are likewise subject to an ongoing process of refinement.

Excerpts from the WASPA Advertising Rules

INTRODUCTION:

- o The "Advertising Rules" shall be henceforth be referred to in this document as the "Rules."
- o These Rules are enforceable from 1 January 2006.
- o These Rules form an integral part of the WASPA Code of Conduct v3.2 and should be read concurrently with the Code Of Conduct.
- o These Rules have been formulated to provide best practice for the advertising of Content and Content Services by WASPs and their Information Providers in South Africa who use the South African mobile networks for access to their Content and services.
- o The Rules have been devised to be specific to various advertising mediums which Content providers may utilize. Each medium has its own formatting and display variations which these guidelines attempt to cover.
- o Whilst each section can be used as standalone criteria for that media, there are however common criteria to all the media outlined in these guidelines, specifically the information required to be displayed to the consumer, and where the medium requires it, a voice-over explaining critical information.
- o Each section relating to the medium it covers will show what information and/or formatting is obligatory or what are minimum criteria. Examples of best practice are also included.
- o While this document has specific instructions on formatting, timing and the information required and definitions pursuant thereto, WASPs and their Information Providers may not seek to circumvent these criteria in any way by attempting to exploit any potential loopholes in the Rules where by doing so they may deprive the consumer of the minimum information required to make informed choices as the cost of access to Content/services and the terms and conditions associated with such access.

For subscription services, providers should take all reasonable steps to ensure that all promotional material, whether in print media, on the Internet, television or transmitted via text message, clearly explains how the subscription service works. Consumers should have ready access to an explanation of their "purchase" and what, if anything, they need to do to access the Content. Great care should be exercised in using the word 'free'.

DEFINITIONS:

Subscriber: Any person that accesses the telecommunications facilities of any mobile network operator.

Subscription Service: Any service for which a Customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.

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Title Safe Area: The section on a TV/Video display monitor approximately a 30% inward area from all four side of the outer video edge. The video associations of the world have established these areas so that images fall within optimal viewing areas once the video signal is played on a standard television.

T&C: "Terms and Conditions" - any conditions attached to access to Content Services that a consumer must be made aware of.

Television-related Rules

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

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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.

T&C DISPLAY TEXT TYPES (ALL, OR COMBINATION OF EXAMPLES BELOW):

- Two SMSs Required at R--- each
- WAP and GPRS access required
- Adults Only.
- Prize awarded after 1 Jan 20--.
- Free SMS/Minutes do not apply.
- VAS cell rates apply.
- Failed Requests billed.
- Updates sent until cancelled.

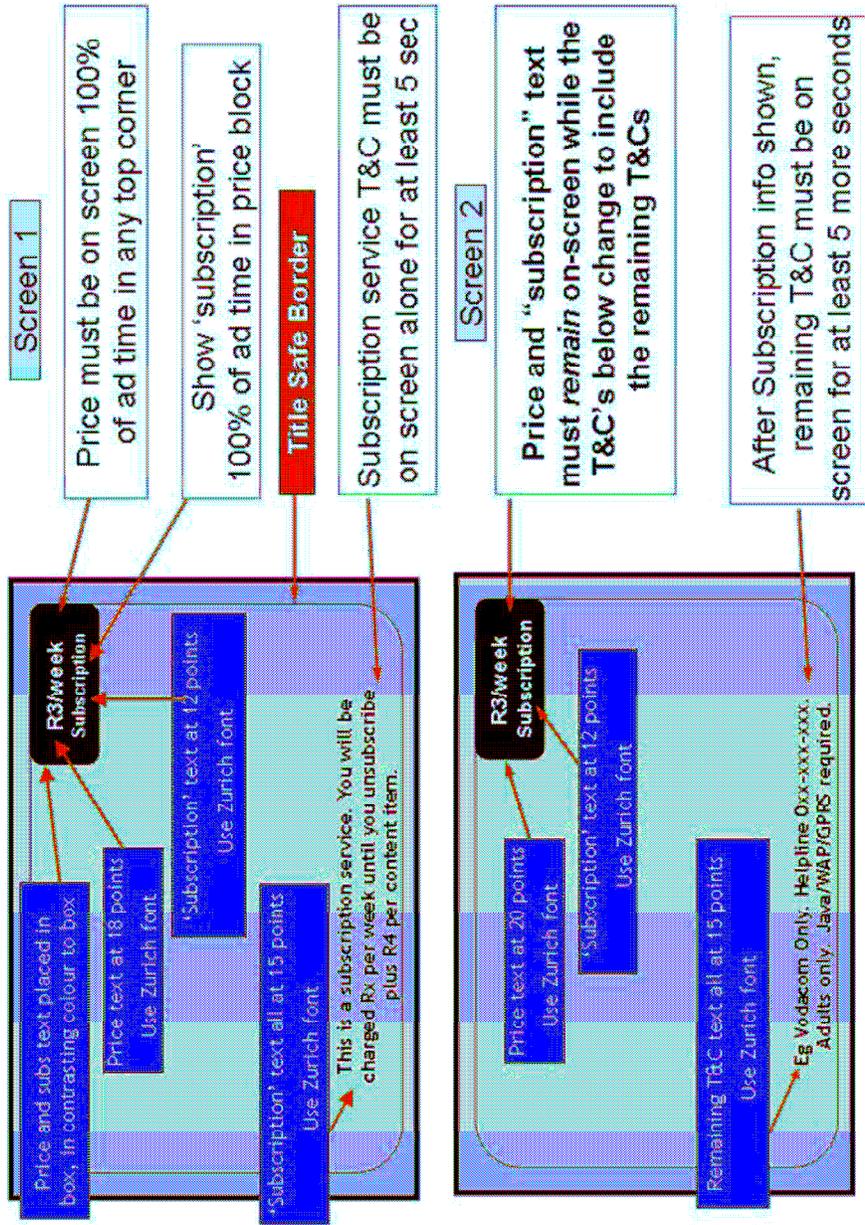
Minimum T&C Display Text For Subscription Services:

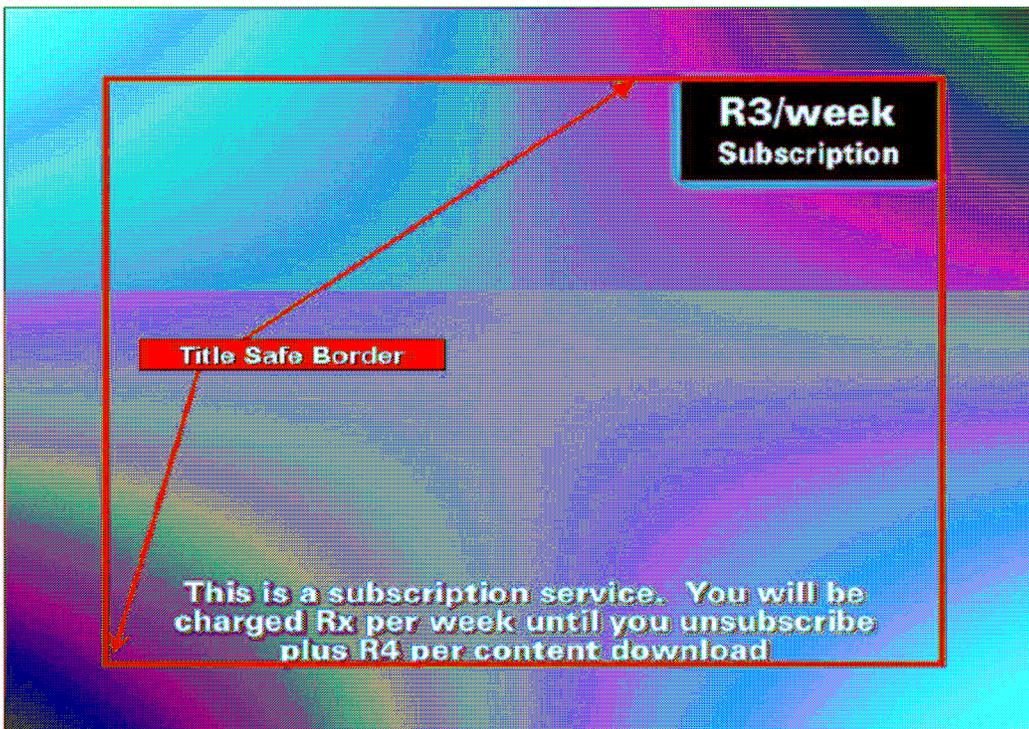
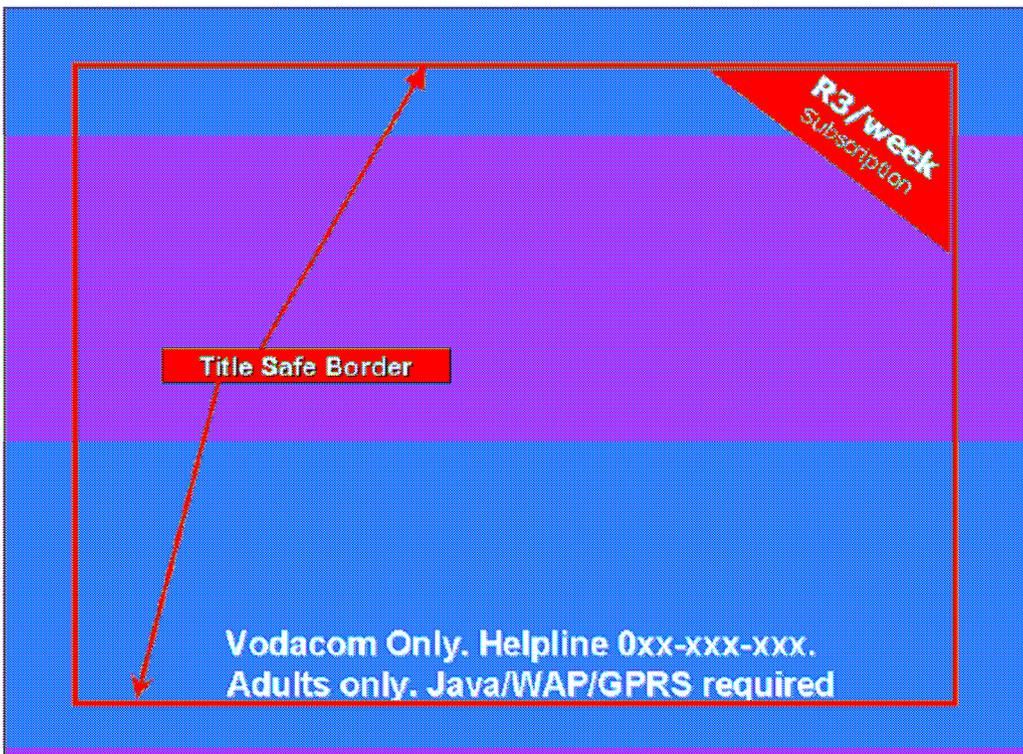
"This is a subscription service. You will be automatically charged R--- every 7 days until you unsubscribe."

OR: "This is a subscription service. You will be charged R-- every 7 days until you unsubscribe, plus R-- per xxxx".

(where xxxx is the type of content delivered as part of that service)

*Some examples from the Television Advertising section
of the WASPA Advertising Rules*





2.3.11 NETWORK COMPATIBILITY: Indicate If Services Are Network-dependent // Indicate if subscription-type dependent

- There must be an clear indication in the advertisement detailing which mobile networks the user must have access to for fully access any Content and/or participate in the service offered

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- If only contract-only or prepaid-only users have access to the service, this must be indicated

Best Practice Suggestion: Display text: "XYZNetwork contract users only"

2.3.13 **SUBSCRIPTION SERVICES:** Show Total Subscription Charge, Frequency of Charge, any bearer charges and any additional charge/s

(i) Must Use The Words "Subscription Service"

If the Content provider is providing a continuous, subscription-like or subscription-based service, then the words "Subscription Service" must be prominently displayed at the top section of the advertisement as well as at each Content or service section in the advertisement where various subscription types are displayed.

No acronym, letter (eg "S"), number, abbreviation (eg "Subs"), icon, or any other mark may be used as an alternative to the words "Subscription Service" anywhere in the advertisement when that Content is only available at all and/or at a particular cost as part of a subscription service.

(ii) Must Indicate Charge/s:

The advertisement must indicate in the font size, position and type as indicated:

- (a) The TOTAL charge that the consumer will incur for the subscription component of their access to that subscription service.
- (b) The frequency (and the minimum frequency, if applicable) at which they will be charged for the subscription component of access to that subscription service.
- (c) Whether, in addition to the periodic subscription charges in (a) & (b) above, there are any additional charges applicable to obtaining any particular service, Content or class of Content on the advertisement. [See (iii) below]

This indication must include the potential and cost of any (additional) bearer charges.

(iii) Must Indicate Cost Of Any (Additional) Per-Content Access

If in addition to a periodic subscription charge the consumer could additionally be charged on a per-access basis for access to any particular service, Content or class of Content on the advertisement within the subscription period and terms, then the advertiser must make it clear to the consumer that access this Content or service will, over and above the periodic subscription cost, incur additional charges per Content or service access.

The periodic subscription cost, the frequency of the periodic charge, and where applicable, the additional access cost must all be displayed clearly and TOGETHER, in a position immediately above, below, or to the side of the Content, service, or class of Content. There must in particular be an indication whether bearer charges are included or not in the access cost.

o [See also 'BEARER CHARGES' above)

(iv) Must Differentiate Clearly Between Multiple Subscription Types

If in any advertisement there may exist the possibility to subscribe to a number of individual subscription services which would ordinarily each carry a separate but additional subscription charge and associated charging frequency or additional per-Content access charge, then this possibility of the consumer being charged at multiple prices and charging frequency must be clearly indicated.

(v) Must clearly Differentiate Between Non-subscription and subscription Types if both available in the same advertisement:

Taking into account the provisions in section 11.1.2 in v3.2 of the WASPA Code Of Conduct on relating to an "independent transaction," if an advertisement has components to it that promote

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(a) Content that is ordinarily made available to a consumer on payment of a once-off payment for that individual Content without the need to subscribe to that service,

AND

(b) Content that will be available at all, and/or at a particular price or even free only if the consumer subscribes to a subscription service,

then this distinction between the availability of non-subscription and subscription charging must be made clear by unambiguously demarcating in separate sections (and not just wording) the non-subscription portion from the subscription service portion or Content in the advertisement.

The words "Subscription Service" as well as the total charges and any additional access charges and charge frequency for that subscription service must be clearly indicated in the form specified.

ADDITIONAL BACKGROUND NOTES TO SUBSCRIPTION SERVICES:

Any request to be subscribed to a subscription service must be an INDEPENDENT TRANSACTION (see s11.1.2 of v3.2 of the WASPA Code of Conduct). Hence subscribers cannot be subscribed to a subscription service through having requested specific Content, or having being made to believe by a (practically) confusing ad design that they are requesting Content on a once-off (non-subscription) basis.

Confusion by consumers may arise in cases where a single advert may indicate the availability of Content to users (usually on a network that has not enabled subscription services) on a once-off basis, as well as on a subscription basis (to users on a network that has enabled subscription services), even though the subscription and non-subscription services may be on a different number range.

If confusing, this may create the scenario where the consumer lacks a specific intention of subscribing to a service (s11.1.2).

To avoid this scenario, advertisers must avoid advertising material designs where subscription service access can be confused with non-subscription services for the same or same type of Content in the same ad. Unless this distinction is made clear, the non-subscription portion of an ad which has as its center the requesting of specific Content (on a once-off basis to users on a network that does not have subscription services) may have the effect of (possibly inadvertently) breaching the 'independent transaction' criteria of the subscription portion of the code of conduct (See also s11.1.4 of v3.2 of the Code of Conduct)

2.4 INFORMATION REQUIRED FOR DISCLOSURE

2.4.1 Where Applicable, The Following Is Mandatory Information That Must Be Displayed In Any Advertisement In Any Media Where An Access Channel Is Advertised:

1. PROVIDE CLEAR INDICATION OF TOTAL COST

- R5/SMS. Premium rates. Free SMSs Do Not Apply.
- R20/game. Premium rates. Free SMSs Do Not Apply. WAP required.
- Two SMSs Required at R--- each. Premium rates. Free SMSs Do Not Apply.
- Call 08x-xxx-xxx. VAS Rates Apply. Free minutes Do Not Apply.

2. PROVIDE CLEAR INDICATION OF MINIMUM REQUIREMENTS TO FULLY ACCESS SERVICE/CONTENT

- Call 08x-xxx-xxx. VAS Rates Apply. Free minutes Do Not Apply. Minimum 3 minutes.
- Seven SMSs at R--- each for registration. Premium rates. Free SMSs Do Not Apply.

3. INDICATE IF SUBSCRIPTION SERVICE, AND NATURE THEREOF - INCLUDING PRICE AND (MINIMUM) FREQUENCY

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- This is a subscription service. You will be automatically charged R--- every week until you unsubscribe.
- This is a subscription service. You will be charged R-- per week until you unsubscribe, plus R—per wallpaper. WAP required.”

4. INDICATE WEB SITE ADDRESS IF REFERRING TO ADDITIONAL T&CS VIA WEB

- Eg xyz.co.za/tc

5. INDICATE CUSTOMER CARE ACCESS NUMBER

- Helpline 0xx-xxx-xxxx for
- For Help, SMS to 3xxxx (R1/SMS)

6. IDENTIFICATION OF WHO IS PROVIDING THE ADVERTISED SERVICE

- NiceCompany (Pty) Ltd

7. INDICATE IF ANY ACCESS REQUIREMENTS

- WAP Required
- GPRS Required
- WAP/GPRS required

8. INDICATE IF SERVICE IS HANDSET-RESTRICTED [Note: Best efforts at handset compatibility if restricted to more than 30 handset models]

- Nokia Series60 handset required or
- Java Handset Required or
- Only available for Compatible Handsets. For list, SMS Your Model Number to 3xxxx (R1/SMS) or
- Only available for Compatible Handsets. For List, see xyz.co.za/handsets or
- Only available for Compatible Handsets. For list, Call Our Customer Care on 08x-xxx-xxxx (07h00 – 21h00).

9. INDICATE IF FAILED REQUESTS OR ERRORS CHARGED

- Errors charged
- Failed Requests Billed

10. INDICATE NETWORK / ACCESS RESTRICTIONS (IF ANY)

- XYZ Network contract subscribers only

11. INDICATE IF ACCESS TO SERVICE AUTOMATICALLY PLACES USER ON A DISTRIBUTION LIST. INDICATE METHOD & COST OF UNSUBSCRIBING.

- We reserve right to contact you. Updates sent until cancelled. Send 'unsubscribe' to 3xxxx (R1)
- Updates sent until cancelled. Send 'stop' to 3xxxx (R1)

12. INDICATE CLOSING DATE AND T&Cs OF COMPETITIONS

- Competition closes 1 January 2006. Winners will be notified by SMS. You must be over 18 to enter

13. INDICATE IF ANY AVAILABILITY RESTRICTIONS

- Live chat unavailable 01h00-07h00

14. INDICATE THAT ALL PRICES INCLUDE VAT

- All Prices include VAT.

15. INDICATE IF ANY AGE RESTRICTIONS

- Adults only. You may be asked to verify your age.

16. Indicate that consent to use service must first be required by bill payer

- Obtain bill payers consent before using this service

Cost OF ACCESS DISPLAY**9.2.2.1 Formatting Of Access Cost Text:**

_ Access cost text must be of a size that is at least 80% of the largest access number on the page, or 15 point font size, whichever is the greater. The access cost text must be in a non-serif font

- The pricing text must be clearly shown being independent of any other text or image, and not be placed or formatted in a manner where it may be obscured by other text information, graphics or marks that may be displayed around it.
- The cost text must not be part of a colour scheme or design that could obscure (objective) easy reading of complete details of the price.
- All access cost information must be placed horizontally

9.2.2.2 Position of Access Cost Text

- For each unique access number, the full and final cost of the access must be displayed immediately below, or above, or adjacent to the unique access number or Content access code in a non-serif font.
- If the ad and/or offer is on a third party web site as a graphic or display text, then the display text with pricing and contact info must be displayed on immediately below, above or to the side of the access number to show the FULL cost to consumer. This includes for example, text-based ads placed on Google-based (or similar) advertisements.
- The T&C text must be placed close as possible to the unique access number.
- T&C information must be placed horizontally.
- If multiple offers are made on the same advertisement and the cost and T&C differ with each offering, each offering must show the cost & T&C separately and clearly.
- While cost information associated with an access number may be displayed elsewhere on a web site (for example cost information also placed in the T&C page of a web site), this must be done as part of a duplication of the pricing. Hence, cost information cannot solely be placed on, for example only the T&C page where accessing the T&C page requires that the user click away from the initial page that displayed the access number.
- The consumer should thus not have to scroll down significantly on that same page or follow any links to other pages to be made aware of the full pricing and T&C associated with a unique access number.
- No cost and/or T&C information may be placed on in-view type pages.
- No cost and T&C information may be placed on any Internet web page requiring a particular add-on component or facility that is not generally available to all users on the Internet. This prohibition extends to placement on pop-up and in-view pages.

9.2.3 T&C DISPLAY RULES**9.2.3.1 Formatting & Font Criteria For T&C Text**

- The T&C text must be in 12 point font size, or 50% of the largest access number on a Web page, whichever is the greater. The T&C must be in a non-serif font
- All T&C information must be placed horizontally

9.2.3.2 Position of T&C display text

- For each unique access number, the full and final cost of the access must be displayed immediately below, or above, or adjacent to the unique access number in a non-serif font.
- This T&C text must be placed close as possible to the unique access number. If multiple offers are made on the same advertisement and the cost and T&C differ with each offering, each offering must show the cost & T&C separately and clearly.

9.2.16 SUBSCRIPTION SERVICES: Show Total Subscription Charge, Frequency of Charge, any bearer charges and any additional charge/s

(i) Must Use The Words "Subscription Service"

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If the Content provider is providing a continuous, subscription-like or subscription-based service, then the words "Subscription Service" must be prominently displayed at the top section of the advertisement as well as at each Content or service section in the advertisement where various subscription types are displayed.

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(ii) Must Indicate Charge/s:

The advertisement must indicate:

(a) The TOTAL charge that the consumer will incur for the subscription component of their access to that subscription service.

(b) The frequency (and the minimum frequency, if applicable) at which they will be charged for the subscription component of access to that subscription service.

(c) Whether, in addition to the periodic subscription charges in (a) & (b) above, there are any additional charges applicable to obtaining any particular service, Content or class of Content on the advertisement. [See (iii) below]

This indication must include the potential and cost of any (additional) bearer charges.

(iii) Must Indicate Cost Of Any (Additional) Per-Content Access

If in addition to a periodic subscription charge the consumer could additionally be charged on a per-access basis for access to any particular service, Content or class of Content on the advertisement within the subscription period and terms, then the advertiser must make it clear to the consumer that access this Content or service will, over and above the periodic subscription cost, incur additional charges per Content or service access.

The periodic subscription cost, the frequency of the periodic charge, and where applicable, the additional access cost must all be displayed clearly and TOGETHER, in a position immediately above, below, or to the side of the Content, service, or class of Content. There must in particular be an indication whether bearer charges are included or not in the access cost.

o [See also 'BEARER CHARGES' above]

(iv) Must Differentiate Clearly Between Multiple Subscription Types

If in any advertisement there may exist the possibility to subscribe to a number of individual subscription services which would ordinarily each carry a separate but additional subscription charge and associated charging frequency or additional per-Content access charge, then this possibility of the consumer being charged at multiple prices and charging frequency must be clearly indicated.

(v) Must clearly Differentiate Between Non-subscription and subscription Types if both available in the same advertisement

ADDITIONAL BACKGROUND NOTES TO SUBSCRIPTION SERVICES:

Any request to be subscribed to a subscription service must be an INDEPENDENT TRANSACTION (see s11.1.2 of v3.2 of the WASPA Code of Conduct). Hence subscribers cannot be subscribed to a subscription service through having requested specific Content, or having being made to believe by a (practically) confusing ad design that they are requesting Content on a once-off (non-subscription) basis.

Confusion by consumers may arise in cases where a single advert may indicate the availability of Content to users (usually on a network that has not enabled subscription services) on a once-off basis, as well as on a subscription basis (to users on a network that has enabled subscription services), even though the subscription and non-subscription services may be on a different number range.

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If confusing, this may create the scenario where the consumer lacks a specific intention of subscribing to a service (s11.1.2).

To avoid this scenario, advertisers must avoid advertising material designs where subscription service access can be confused with non-subscription services for the same or same type of Content in the same ad. Unless this distinction is made clear, the non-subscription portion of an ad which has as its center the requesting of specific Content (on a once-off basis to users on a network that does not have subscription services) may have the effect of (possibly inadvertently) breaching the 'independent transaction' criteria of the subscription portion of the code of conduct (See also s11.1.4 of v3.2 of the Code of Conduct)

Guidance to ASASA

The Adjudicator tested the IP's subscription service.

On sending the keyword "bible" to the access number 31070, a response was received indicating:

To confirm your subscription, please reply with the word SUB

Having done so, a response was received indicating:

PLEASE SAVE MESSAGE. Daily SMS will b sent to you at R1.50 To UNSUBSCRIBE sms BIBLE OFF to 31070. Addt'l t and c, www.biblewhereur.com:Helpline:0761339975

A request to unsubscribe was confirmed in a message reading:

You have been unsubscribed. To restore your subscription send "BIBLE" to 31070

The difference in the pricing in the television advertisement (being R1 per day) and both the Internet web site and SMS response received (R1,50 per day) is likely to be the result of a price increase since the consumer complaint was made (in April 2006) and ASASA may wish to consider the IP's more recent television advertising in order to confirm this.

From the perspective of the WASPA Code of Conduct and Advertising Rules, the IP is largely compliant. It is the personal view of this Adjudicator that advertising cannot stipulate every conceivable term and condition relating to an advertised service. In providing a two stage subscription process and clearly indicating the unsubscribe mechanism in a welcome SMS, the IP is providing sufficient information for a consumer to make an informed choice and to terminate the service should that consumer no longer wish to receive the relevant service.

Those areas in which the IP **may not** be compliant with the WASPA Code of Conduct are relatively minor and technical in nature. **From a preliminary view and without having given the IP (through the SP) an opportunity to respond to a formal complaint and explain, justify or otherwise comment on these allegations, these possible areas of non-compliance may include**, inter alia:

- Use of the word "OFF" rather than "STOP" in the unsubscribe request (ie an SMS with the words "bible off" is required in order to unsubscribe,

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rather than “bible stop”, “service stop” or similar as required by the WASPA Code of Conduct);

- Certain of the font sizes and the layout of the IP’s Internet web site do not accord with the requirements of the WASPA Advertising Rules;
- The network restriction to MTN and Vodacom is not indicated in the advertisement. This restriction is due to the fact that Cell C has not yet introduced the event based billing system necessary to process subscription services.

As indicated above, this is not a situation of “opting out” of a service, but rather a consumer joining a subscription service with full knowledge of the terms and conditions applicable thereto and specifically the price thereof. In addition, the consumer should be aware of the requirements in order to terminate such service, should they no longer wish to receive content delivered in terms of such service.

In the view of this Adjudicator, the IP through the SP is substantially complaint with the WASPA Code of Conduct and Advertising Rules. Were a complaint to be brought against the service offered by the IP through the SP, the SP and the IP would be afforded an opportunity to respond thereto in terms of the WASPA Code of Conduct and if found to have contravened the Code of Conduct or Advertising Rules, may be subject to the imposition of sanctions.

In this Adjudicator’s personal opinion, the most likely sanction would be a reprimand and an instruction to remedy the minor breaches of the Code of Conduct and/or Advertising Rules.