



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Exactmobile
Information Provider (IP) (if any)	N/A
Service Type	Subscription
Source of Complaints	Competitor
Complaint Number	#0391
Date received	4 August 2006
Code of Conduct version	4.3

Complaint¹

The Complainant, an information provider affiliated to WASPA, alleges a breach of Section 6.3.13 of Version 1.6 of the WASPA Advertising Guidelines occurring on pages 2 & 3 of the SP's Exactmobile Directory #32 ("the Directory").

The essence of the Complaint is that the full cost of access to the service advertised is not disclosed in that the cost of unsubscribing is not disclosed as required.

In amplification of the above the Complainant states further:

"Only once you are subscribed to the service do you get a notification that it will cost you R1 to unsubscribe from the service in the welcome sms. Customers need to be made aware of this additional charge before they are subscribed to the service. This information is not disclosed anywhere in the content booklet and not in the double opt in message either.

The first time the customer is made aware of this additional charge, in the welcome message below, they are already subscribed to the service.

Welcome to the Club! Go to eXactmobile NOW! To enjoy the benefits. The cost is R10 per month. To unsubscribe send STOP to 32227 (R1/SMS). Helpline 0822 302 222.”

SP Response

The SP's Response is as follows:

“This complaint refers to page 3 as Page 2 is not an ad for a subscription service. The complainant alleges that the cost to unsubscribe is not stated.

There are a number of ways to subscribe and unsubscribe from this service. These are via the Exactmobile Web site, www.exactmobile.co.za, via the Exactmobile WAP site at www.exactmobile.co.za/now as well as via SMS. Only if the user unsubscribe's via SMS is the user charged R1.00. If the subscriber uses the web site or WAP site, then no charge is levied apart from normal GPRS rates or Telkom Internet charges.”

The SP further indicated that the SMS unsubscribe option has been included in future advertisements and provided evidence thereof.

Sections of the Code considered

Code:

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

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

Advertising Rules Version 1.6:

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

- (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. 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.

Decision

While the SP's decision to clarify the applicability of unsubscribe charges upfront in its content booklet advertising is welcomed, I can find no obligation in either the Code or the Advertising Rules which unequivocally states that this must be done in order to ensure compliance with the Code and/or Advertising Rules.

A close examination of section 6.3.13 of the Advertising Rules does not support a contention that the cost of unsubscribing can properly be viewed as falling within the ambit of this section. Certainly the cost of unsubscribing is not a bearer charge, additional content charge and it is debateable whether it could fall within the "the

TOTAL charge that the consumer will incur for the subscription component of their access to that subscription service”².

While it may well be preferable for the cost of unsubscribing from a subscription service to be regarded as a term and condition of a subscription service and stated upfront so as to fully inform a consumer's decision as to whether to subscribe, it is my position that, were this the intention of the drafter's of the Code and Advertising Rules, such an obligation would have been explicitly stated in section 6.3.13, as is the case with other forms of charges. Furthermore it appears from section 11.1.7 of the Code that the obligation on the SP to provide unsubscribe information arises only once the end-user has subscribed and the requirement to send a confirmation message arises.

In the circumstances the Complaint is dismissed.

² WASPA Advertising Rules section .3.13 (ii)(a)