



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	iTouch
Information Provider (IP) (if any)	NA
Service Type	Subscription pricing (Jippii)
Source of Complaints	Competitor
Complaint Number	#0584
Date received	13 October 2006
Code of Conduct version	4.6

Complaint

The Complainant alleges a breach of sections 6.2.2, 6.2.4 and 6.2.5 of the WASPA Code of Conduct with regard to an advertisement placed by the SP in the edition of People Magazine appearing in the week 10 October 2006¹.

Three elements appear from the detailed complaint as logged with WASPA:

- “Just below the ad for the car competition it says SMS SUBTONE to 31516. There is no pricing and also no indication what this is for.”
- “Just above the images of the Wallpapers, they are using the short code 36700. There is no pricing for this number.”
- “In the Ringtone section it says R2.50 for clubbers and R5.00 for non clubbers. There is however no way to join the club. If the wording SMS SUBTONE relates to joining the club, the even if you joined the club, you would still pay R5.00 as the short code 36700 is rated at R5.00.”

A copy of the advertisement is appended to this Adjudication marked Annexure A.

¹ The same advertisement is the subject of a Complaint from the same Complainant under Complaint #0583.

SP Response

The SP's Response is, unusually, short and to the point:

"All relevant information for Jippii, direct requests and club is included in the advertisement - clear & legible. Please find attached a copy of the ad²."

Problematically the version of the ad provided by the SP differs materially from that provided by the Complainant.

Sections of the Code considered

The following sections of version 4.6 of the WASAP Code of Conduct were considered:

6.2. Pricing of services

.....

6.2.2. All advertisements for services must include the full retail price of that service.

.....

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.

Decision

As regards the correct version of the advertisement to be used in the adjudication of this Complaint it should be noted that version provided by the Complainant appears to be taken from the actual magazine while the SP-supplied version is a stand-alone

² See Annexure B

artwork. It appears further that the advertising by-lines for the two different versions show different dates.

It appears preferable for this reason alone to accept the version which accompanied the Complaint (i.e. Annexure A).

This finding implies that the Response is based on an incorrect version of the advertisement and cannot be accepted.

Taking the specific elements of the Complaint individually:

- *“Just below the ad for the car competition it says SMS SUBTONE to 31516. There is no pricing and also no indication what this is for.”*

The reference to the short code 31516 and what can be achieved by SMSing SUBTONE to 31516 is confusing. It is certainly unclear whether this relates to subscribing to the SP's Club even though an examination of www.jippii.co.za indicates that this is indeed the manner in which to subscribe. It is noted that this issue remains unresolved on the version of the advert supplied by the SP.

There is no pricing associated with this call to action and it is in breach of section 6.2.5 of the Code.

- *“Just above the images of the Wallpapers, they are using the short code 36700. There is no pricing for this number.”*

Section 6.2.5 requires that the “price must appear with all instances of the premium number display”. The SP has done this in respect of all other instances of the use of the 36700 shortcode but has omitted to do so in this instance.

This is a breach of section 6.2.5.

- *“In the Ringtone section it says R2.50 for clubbers and R5.00 for non clubbers. There is however no way to join the club. If the wording SMS SUBTONE relates to joining the club, the even if you joined the club, you would still pay R5.00 as the short code 36700 is rated at R5.00.”*

This flows from the confusion surrounding the inclusion of the 31516 short code. The following is taken from the terms and conditions of service on www.jippii.co.za:-

“1.3 Users who are Vodacom subscribers may become Club Members by subscribing to any one or more of our available Content Categories by sending us an SMS as follows: SUB and ‘Category name’ to 31516. You will be sent one randomly selected free item of Content from that Category. Once a Club Member, you are entitled to unlimited content within your subscribed Categories at half the then current standard Jippii retail price. Your Club Membership for each Category will be valid for a period of 14 days from the date of subscription, and will be renewed automatically for further consecutive 14 day periods unless you unsubscribe or are unsubscribed by us. Club Members may unsubscribe from any Category at any time by sending us an SMS as follows: STOP and ‘Category name’ to 31516 (e.g STOP LOGO) or from all Categories by sending us an SMS as follows: STOP ALL to 31516.

2. Charges and Payment

2.1 Club Members will be billed a R5.00 (incl.VAT) Club Membership fee each time you use your Vodacom Handset to subscribe to a different Category and, unless you unsubscribe or are unsubscribed by us, a R5.00 (incl.VAT) Club Membership fee on a bi-weekly basis thereafter for each Category in which you are a Club Member. We will notify Club Members of changes to their Club Membership fees or the billing period applicable to their subscription.

2.2 Users will be charged for each item of Content you download at the applicable standard retail price for the Category in which such item of Content falls, unless you are a Club Member for such Category, in which case you will be charged at half the standard retail price per download. You are solely responsible for using the Services correctly and for obtaining the correct Content. All Content downloads will be billed irrespective of your mistakes.

It is assumed that the SP has a mechanism in place such that the 50% discount is extended to Club members and the pricing reflected, notwithstanding the confused nature of the advert, is not misleading.

This element of the Complaint is not upheld.

In considering the appropriate sanction in respect of the two breaches set out above the following factors have been taken into account:

- with regard to the pricing of the short code 36700 there are a number of instances within the advertisement where this pricing is clearly stipulated
- a complaint was upheld against the SP in the Adjudicator's Report in respect of complaint numbers 0014 and 0015 regarding a breach of section 6.2.5 of the WASPA Code of Conduct.
- in the Adjudicator's Report in respect of Complaint 0582 the SP was found to have breached section 6.2.5 in two separate instances and, taking into account the findings in the preceding paragraph, fined R10 000 per instance. It appears that Complaint 0582 was lodged contemporaneously with the instance Complaint.

In the circumstances the following order is made:

The SP is found to have breached section 6.2.5 of the Code of Conduct in two separate instances and a fine of R10 000.00 is imposed on the Member in respect of the first breach (short code 31516) and R5 000.00 in respect of the second breach (short code 36700).

Fines are payable to WASPA within five (5) working days of notification of this sanction.