



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Integrat
Information Provider (IP) (if any)	Timwe
Service Type	Subscription
Source of Complaints	Competitor
Complaint Number	#0592
Date received	16 October 2006
Code of Conduct version	4.6

Complaint

The Complaint relates to a television advertisement flighted on the weekend of 13 & 14 October 2006. The Complainant alleges that the SP has breached clauses 3.1.1 and 4.1.1 of the WASPA Code of Conduct which require, respectively, WASPA members to “conduct themselves in a professional manner in their dealings with the public” and to commit to “honest and fair dealings with their customers”, with particular regard to pricing information for services offered.

The detailed Complaint reads as follows:

“The text of the ad states that you will get the information every week. You are however billed every day. A consumer will hear the audio and believe that they will be billed weekly as the content is delivered weekly. The pricing in the top corner however says you are billed daily.”

SP Response

The IP, through the SP’s Response, stated that it found all pricing information to be clear and accurate.

“The complaint states that the consumer is led to believe that the service is charged on a weekly basis, rather than on a daily basis, however it is explicitly shown on the corner of the screen in a bright red colour, and on the footnote displayed at the end of the ad. This alleged misguidance is due to an audio message, which among many other things, informs the viewer that this service will be provided every week. This is so, because content is related to the entire week, and for the reason that the subscriber can consult the referred content every day of the week and as many times he finds fit, it is only logical that the service is charged on a daily basis.”

As per WASPAs advertising guidelines the aforementioned advertisement includes the periodic subscription charge (shown twice), the charging frequency (shown twice) as well as all costs incurred in the purchasing of the services. The exact words used are ‘R4,99 **per day** subscription’. Furthermore the ‘terms and conditions’ of the advertisement state R4.99/SMS per day. In summary the pricing information and frequency of billing of this advertisement is clear and logical.”

The SP stated, in addition to the above, that:

“The service offered is a CLUB service, users access a WAP site to view content; it is not a Push Subscription Service - content is not pushed unto the subscribers handset every day. The subscribers may access the club as they wish, and are billed the R4.99 per day as a membership fee to a club, which offers access to all star signs’ and horoscopes at any time. They are however reminded regularly of the subscription and the access path of the content is provided each week”.

Sections of the Code considered

3.1. Professional and lawful conduct

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

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.

Decision

In order to evaluate the validity of the Complaint an analysis of different features of the advertisement with particular focus on whether the advertisement, as a whole, is misleading or confusing as regards pricing information is required.

The crux of the Complaint is that consumers may be confused as between the billing frequency and the frequency with which content is updated. Billing is daily while content is updated weekly.

“The text of the ad states that you will get the information every week. You are however billed every day. A consumer will hear the audio and believe that they will be billed weekly as the content is delivered weekly. The pricing in the top corner however says you are billed daily.”

The following has been taken into consideration:

- The appearance of a red triangle in the top right hand corner of the screen for the duration of the advertisement showing a billing frequency of R4,99 per day;
- The appearance of the words “R4.99/SMS per day” in the terms and conditions displayed for the full duration of the advertisement;
- The use of the following words in the voice-over script – “Receive your star signs forecasts every week. Subscribe to Club Horoscope Match....”

The Complainant is of the opinion that the statement in the voice-over is of such a nature that it will trump the other indications set out in the advertisement that show billing is daily. With respect I cannot agree with this assertion – the pricing information is as clear as it should be with regards to the billing frequency.

This is not to say that there is not scope for confusion created by the voice-over – certainly wording to the effect that, for example, horoscopes are updated weekly, would be preferable and the IP/SP is urged to effect such a change.

It cannot, however, be found that such potential confusion is sufficient to trigger a breach of either section 3.1.1 or 4.1.1 of the Code.

The Complaint is accordingly not upheld.