



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	ViaMedia
Information Provider (IP)	Opportune Trading 117 CC t/a Xcite Mobile
Service Type	Content Download
Source of Complaints	Competitor
Complaint Number	#0636
Code of Conduct Version	4.6

Complaint

A complaint was received from a competitor of the SP regarding the IP's Internet web site located at www.xcitemobile.co.za. The complainant states:

On the web site www.xcitemobile.co.za, there are many places on the page where the short code 31314 is used with no pricing. Although this is at the top of the page, the code states that it must be displayed with each access number.

There is no mention of the fact that GPRS is needed to download this content and the cost associated for the GPRS.

The complainant referred to Clauses 9.2.2.2 and 9.2.7 of the WASPA Advertising Rules (incorrectly referred to as the "Ad Guidelines"), which provide:

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-vue 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-vue pages.

9.2.7 BEARER REQUIREMENTS & CHARGES: Indicate need for and possibility of additional bearer charges eg WAP

If any additional bearers (eg WAP and/or GPRS) are required for full access to the advertised service/Content, and where charges will be incurred by a user over and above the cost of the Content or service offered by the advertiser, then the display text in both the body of the advertisement as well as in the T&C must indicate that additional bearer charges may apply.

eg "R10/Game + WAP charges"

o [See also 'PRICING' below]

o [See also 'TOTAL ACCESS REQUIREMENTS' below]

SP Response

The SP provided the following response from the IP:

On review of the complaint we acknowledge that the complainant is technically correct. When modifying the WALLPAPER page (<http://www.xcitemobile.co.za/wallpapers.php>) on the Xcite Mobile website, the contractor responsible, omitted the short code cost and that "WAP charges apply".

The mitigating circumstances are the facts that:

- 1. As acknowledged by the complainant, the price of the short code (and there is only one short code), is very clear and boldly displayed at the top of every single page on the site, including this WALLPAPER page. As can be seen in the attached jpg, it's very difficult to imagine that the hypothetical consumer could be misled or fail to see the pricing.*
- 2. There is very little traffic to this site as it is not advertise anywhere, as we don't put much effort into web at this time.*
- 3. There will have been very few users to have seen that page let alone followed the instructions.*
- 4. This was an honest mistake.*

On receiving the complaint we immediately fixed the page. We find it concerning that, if the complainant believed it to be damaging to the consumer, that he didn't immediately contact ourselves to ensure a speedy resolution (regardless of whether he wished to continue with a formal complaint or not).

Should the complaint be upheld we want this response to be taken as a formal complaint against the complainant for the very same breach, demonstrated in the Jpg attached. On his website www.exactmobile.co.za <<http://www.exactmobile.co.za>> , which gets a huge amount of traffic. On the download page that will be displayed every time a user clicks on content, there

is reference to WAP being require BUT no reference to the fact that it will be CHARGED. In the example provided of a full track download, this could be in excess of R6 additional cost to the consumer. This additional cost is not communicated to the consumer at all.

Decision

The IP's admissions are noted with regard both pricing information and bearer charges.

With regards Clause 9.2.2.2 of the WASPA Advertising Rules, the requirement is the price to be displayed next to "each unique access number". The IP uses a single access number repeated multiple times, so the various repetitions are not "unique" and as such there technically does not appear to be a requirement that the price appear next to a repeated access number.

This contradicts Clause 6.2.5 of the WASPA Code of Conduct, which provides:

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.

The Adjudicator noted the IP's immediate steps to rectify the breaches identified. The adjudicator also considered the mitigating factors submitted by the IP, all of which are relevant in determining the sanction. The Adjudicator was of the view that a fine was appropriate, however the amount thereof should be reduced in the light of the IP's immediate response and the mitigating factors referred to. The Adjudicator accordingly imposed the following sanction:

- The SP is ordered to pay a fine in the amount of R1 000 in respect of the breach of Clause 9.2.2.2 of the WASPA Advertising Rules; and
- The SP is ordered to pay a fine in the amount of R500 in respect of the breach of Clause 9.2.7 of the WASPA Advertising Rules.

Should the SP appeal this decision, both sanctions will be suspended pending the outcome of such appeal.

The Adjudicator instructed the Secretariat to initiate a complaint against the complainant in terms of a possible breach of Clauses 9.2.7 and 9.2.15 of the WASPA Advertising Rules in respect of a failure to indicate that additional bearer costs may also be incurred. The complainant's web site appears to only indicate that WAP / GPRS is required without indicating that this may incur additional costs.