



REPORT OF THE ADJUDICATOR

WASPA Member (SP): Gozomo (Pty) Ltd
Information Provider (IP): (if applicable) Integrat (Pty) Ltd
Service Type: Pricing
Complainant: eXactmobile (Pty) Ltd
Complaint Number: 0637
Adjudicator: Kerron Edmunson
Code version: Code v4.6, Ad Rules v1.6

Complaint

The complainant has submitted a complaint relating to a breach of the Code and the Ad Rules by the SP, as follows:

"Ad guidelines Section 9.2.2.2 – 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.

Section 6.2.2 of the Code – all advertisements for services must include the full retail price of that service."

The complainant states further:

"On the website, the short codes 40994 and 31996 are prominently displayed with no pricing. There is no mentioned [sic] that GPRS charges are applicable with the pricing."

Although the SP cited by the complainant is Integrat, the complainant also cites the Gozomo website as "other ID" and both parties were notified of the complaint. The responses received from each party are identical to one another, but as the website is that of Gozomo, I have reflected Gozomo as the primary SP. Both parties are members of WASPA.

A copy of a webpage was included for consideration.

SP Response

The SP repeats the provisions of the Code and Ad Rules cited by the complainant and then proceeds to detail in point form, its response. I have duplicated these points here:

1. "All purchasing options on the website were suspended in July 2006. The website is for informational purposes only. This means that no customer is able to complete any transaction on the website. All hyperlinks including cited shortcodes lead to an error page. Gozomo deactivated the transaction links

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on the website in July, to develop at better mechanism to protect the customer. If any button to select a product category is selected a message is displayed that reads: "Sorry this service is currently unavailable...". ; No keywords are displayed that are required to complete a transaction.

2. In order for a transaction to be completed in respect of any displayed shortcode, a keyword is necessary. No keywords are displayed on the site. No transaction is possible from the website and therefore there can be no breach. The Gozomo.co.za website has been an informative site since July and not an advertisement. Gozomo has not generated a single transaction from the website since July when the purchasing mechanisms on the site was deactivated.
3. The purpose of the concerned provision in the Code is to protect customers from completing transactions with SP's whilst being unaware of the total cost. Since no service is being offered, it is impossible to complete a transaction; therefore the total cost is not relevant;
4. It is imperative for the website to remain accessible since it contains the T&C's for other running campaigns. A total shutdown of the site would mean non-compliance in respect of other running campaigns;
5. We believe that this complaint was not submitted in good faith as stated in the declaration on the complaint. We implore WASPA to warn the complainant that frivolous complaints will not be tolerated by the organization. The complainant has his own website and understands fully that a keyword needs to be submitted to a short code for purchasing.

For the forgoing reasons we submit that the complaint is without merit and should be dismissed."

Consideration of the WASPA Code

The complainant has referred specifically to sections 6.2.2 of the Code and 9.2.2.2 of the Ad Rules. However it is also relevant to consider sections 1.2 (objectives of the Code of Conduct) and 4 (customer relations) of the Code. The sections are repeated in full for ease of reference:

The Code

1.2: 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 of Conduct also sets standards for advertising mobile application services..."

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.

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



The Ad Rules

9.2.2.2: 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.

It is important to place section 9.2.2.2 of the Ad Rules in context in order to consider the complaint. Section 9.1 of the Ad Rules sets out the scope of the section applying to internet web sites, and states:

9.1: This section applies to all advertising placed on internet-based web sites visible to the general public where Access Channels are displayed. This also includes advertisements placed on third party web sites.

The broad overview contained in section 9.2.1 contains a series of bullet points summarising the requirements for display rules for cost and t&c information on websites. Of the 10 bullet points, 9 address requirements for the display of pricing information.

It is clear to me that the Code and the Ad Rules anticipate that any advertisement for a service using “access channels” published on an internet website will contain full details of applicable cost. “Access channels” are defined in the Ad Rules as “the common PSMS, SMS, IVR, USSD, MMS, 3G or WAP methods of obtaining Content or Content Services or such other methods of obtaining Content or Content Services as may be introduced by the Mobile Network Operators from time to time.

Decision

The SP has denied that it has breached the Code or Ad Rules because the display of the short codes does not also contain keywords and so a customer may wish to send a message to the short code displayed to access the service advertised, but will not be able to do so because there is no key word available. Furthermore, the SP contends that as a customer cannot complete a transaction (because it is physically impossible to do so) there is no need to display pricing information with the short code.

The Code and Ad Rules do not, in imposing an obligation on WASPA members to display pricing information, make any distinction between the obligation to display pricing information only where the customer is able to access a service which is advertised by using a keyword, and the obligation to display pricing information whenever a short code is displayed. Both the Code and the Ad Rules are clear that whenever a short code is displayed the pricing must accompany it. The Ad Rules go further to stipulate that whenever a particular method of access to content or content services is displayed on a website (PSMS, SMS, IVR, USSD, MMS, 3G or WAP), pricing must be displayed in full.

The SP has not indicated why it did not explain to customers why they could not access particular services using the short codes on the site, they only explain that any attempt to use the hyperlink to a particular short code displayed on the site would result in an error message. The website was maintained, according to the SP, “since it contains the t&c’s for other campaigns.” A customer might well expect that he or she would be able to access all services since some could be accessed, and those which could not be accessed were not removed.

It is, contrary to the SP's explanation, entirely relevant to display pricing information in compliance with the Code and Ad Rules, regardless of whether access is possible or not. The SP's argument would have had more weight had there been some explanation on the website of why certain short codes did not have key words, and that those services could not be accessed for the time being, but there was not, on the SP's version. The objectives of the Code as set out in sections 1.2 and 4.1 quoted above, are clear in relation to providing information to customers and particularly pricing information.

Sanction

The SP has breached the provisions of sections 6.2.2 of the Code and 9.2.2.2 of the Ad Rules. In addition the SP has failed to take account of the provisions of sections 1.2 and 4.2 of the Code, and 9.1 of the Ad Rules. Taking into account that a customer was not in fact able to use the service (rightfully or wrongfully) and that there have been no adverse results for customers in the sense that no customers could have complained that they used a service in ignorance of the charges for that service, I have applied the following sanction:

1. the SP is directed to remove all links to short codes or hyperlinks to Access Channels on its website until such time as the service to which those codes or channels relate is available to customers;
2. the SP is directed to pay a fine of R4,000 to WASPA,
in both cases within 5 days of date of publication of this adjudication.

The SP is cautioned that circumvention of the Code or Ad Rules is not acceptable and a larger fine could, in the circumstances, have been appropriate.