



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	ViaMedia
Information Provider (IP)	Opportune Trading 117 CC t/a Xcite Mobile
Service Type	Subscription Service
Source of Complaints	Competitor
Complaint Number	#0639
Code of Conduct Version	4.6

Complaint

A complaint was received from a competitor of the SP. The complainant states:

The price per download is displayed in comparatively (sic) larger font than the weekly minimum price.

The voice over emphasizes the cost of R1.00, while leaving the R5.00 subscription in a small box.

The reasonable consumer is therefore drawn to the R1.00 as it is in larger text and also mentioned in the voice over.

The moving graphics and constant emphasis of R1.00, draw the user away from the R5.00 subscription.

If the ad is viewed as a whole, then the pricing information is not clearly visible as is required by Section 6.2.5

I draw the adjudicators attention to Complaint number 75, where this complaint was initially lodged. The TV ad has not changed so as rectify the findings of this complaint.

The complainant referred to 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.

In addition the Adjudicator considered the provisions of Clause 13.1.7 of the WASPA Code of Conduct, which provides:

13.1.7. Where the complainant has lodged a complaint or dispute, or instituted an action with any other regulatory body or in a Court, and where the subject matter of that complaint,

dispute or action is substantially the same as the subject matter of a complaint lodged by that complainant with the WASPA Secretariat, WASPA may decline to consider and deal with the complaint.

SP Response

The SP provided the following response:

Mr Pekin is forum shopping. This complaint has already been made and resolved through the ASA process. The Advert about which Mr Penkin complains is firstly completely compliant with the WASPA code of conduct and secondly the ASA have ruled that the advert is not misleading and the pricing information is sufficiently clear.

By our understanding the complaint should therefore be dismissed.

We've attached the ruling of the ASA for your convenience.

Should you not agree and reject our motion to dismiss, we would like the opportunity to properly respond to this complaint at that time.

Secretariat Response

The WASPA Secretariat responded to the SP indicating:

The WASPA Code of Conduct provides as follows:

*| 13.1.7. Where the complainant has lodged a complaint or dispute, or
| instituted an action with any other regulatory body or in a Court, and
| where the subject matter of that complaint, dispute or action is
| substantially the same as the subject matter of a complaint lodged by
| that complainant with the WASPA Secretariat, WASPA may decline to
| consider and deal with the complaint.*

Having reviewed the attached ruling of the ASA, it is not entirely clear from that ruling that the subject matter of that ruling is the same as that referred to in the complaint (i.e. a TV ad shown on eTV on 27th Oct 2006). If possible, please could you provide us with some documentation clarifying that the ASA ruling relates to the same advertisement.

If this is the case, we will ask an independent adjudicator to give the complaint a preliminary review, with a view to declining to deal with the matter in terms of clause 13.1.7. of the WASPA Code of Conduct.

Point in limine

The Adjudicator concurs with the SP that the complainant is “forum shopping” and having failed to achieve the expected response from the Advertising Authority of South Africa (“ASA”) Directorate is now bringing a complaint which is substantially the same as that brought before the ASA Directorate, before WASPA in terms of the WASPA Code of Conduct.

This is an extremely disingenuous way of proceeding and one which should lead to WASPA declining to deal with the complaint, unless there is a compelling reason not to do so.

The Adjudicator has had the benefit of being able to refer to the decision of the WASPA Appeal Panel in Complaint #0075, which concerns a previous version of the advertisements giving rise to this complaint and which advertisements are similar to the advertisements giving rise to the instant complaint, albeit with significant changes having been effected.

As such, the Adjudicator held that WASPA should not proceed with this complaint.