



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Exactmobile
Information Provider (IP) (if any)	s/a
Service Type	Content services
Source of Complaints	Adjudicator's report 0636
Complaint Number	1021
Date received	13 February 2007
Code of Conduct version	4.8

Complaint

This complaint was instituted by the Secretariat pursuant to an instruction from the WASPA Adjudicator who adjudicated on complaint no. 0636. The Service Provider was the complainant in complaint 0636. In its response to complaint 0636, the information provider, Xcite Mobile, has alleged that the Service Provider has contravened sections of the Advertising Rules when advertising content services on its website at <http://www.exactmobile.co.za> which require WAP access.

The exact instructions from the Adjudicator on which this complaint is based are as follows:

"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."

SP Response

The Service Provider responded as follows:

"This complaint arises from a complaint lodged against Xcite Mobile where Xcite have no mention of the fact that GPRS is required when downloading any IP based content.

Xcite Mobile made mention that Exactmobile does not state the cost of GPRS is their response. If Xcite Mobile have an issue with Exactmobile's advertising, then Xcite Mobile should lodge it's own complaints and not rely on the adjudicator to do so. It was agreed some months ago that competitor complaints must first be lodged informally and if not rectified, a formal complaint should be lodged. As this is actually a competitor complaint, the process is not being followed.

However, the following is a response to this complaint lodged by the adjudicator based on comments made by Xcite Mobile

Section 9.2.7 of the Ad guidelines states that One must indicate need for and possibility of additional bearer charges eg WAP.

Eg R10/game + WAP charges.

It goes on to say [See also PRICING below]

Referring the pricing clause. The clause states show component, bearer and total cost.

Under section (a) Bearer costs: The clause states If additional WAP/GPRS bearer charges may be incurred over and above any other Access Channel costs, the possibility therefore must be indicated.

Eg 2xR5 SMS = Total R10 + WAP charges.

[see also TOTAL ACCESS REQUIREMENTS" below

In section 9.2.18 TOTAL ACCESS REQUIREMENTS

Mention is made of SMS, IVR, USSD, VAS/ PREMIUM RATES, and VAT.

Therefore although under the pricing section, a WASP is obliged to state the full cost, the examples given only state "+ WAP Charges" No mention is made of an actual cost.

On all the download pages, Exactmobile clearly uses a "W" symbol to indicate that WAP charges are applicable. This "W" symbol is used in all Exactmobile's advertising and has been adopted as an industry standard by other WASP's This is in line with the ad guidelines. In all Exactmobile's print ads, an approximate cost is also indicated.

Exactmobile have however made changes to the download pages on the web site to indicate the actual costs. Although the ad guidelines are not clear in this matter, Exactmobile has however added in the costs. As the cost varies based on the file size, the file size is also shown.

See the following 2 screen shots from the Exactmobile web site.

**Full Track Downloads:** Wake Up - Hilary Duff

File size: 2.50 MB

AVAILABLE FORMATS	LISTEN TO TRACK	SUPPORTED HANDSETS	DOWNLOAD METHODS			info
			Use your phone bill	Use your eXactcredits	Send the code in an SMS to 3 33 33	
Full Track			Download » Cost: R 20.00	Download » Cost: 180 eXactcredits	Code: 4388827 Cost: R 20.00	

To sample this clip, click **TWICE** on the Play Button below!

- IMPORTANT NOTICE!** Full Track Downloads are large in file size and require a 3G compatible-and-enabled handset AND SIM Card. Alternatively you require a compatible handset with an EDGE capable-and-enabled SIM Card to download successfully! Your handset MUST also have sufficient memory available (we suggest on average 4 MB, albeit Full Track file sizes vary and may be larger – we indicate the size of your track for your information). Please also ensure your 3G or EDGE service is enabled accordingly (contact your Service Provider in this regard).
- exactmobile NOW!** Get your content on eXactmobile NOW! any time, anywhere - click here for more »
- Need Help?** E-Mail our Support Call Centre support@exactmobile.com or phone us on **0822 302 222** (06h30 - 22h00)
- WAP Access Needed:** This symbol indicates you must dial up to the Mobile Internet using WAP (Wireless Application Protocol) to complete the download of your Mobile Content Item. Your Handset must support WAP and you require the correct WAP setting to connect to eXactmobile NOW! (Mobile Internet Homepage). Learn all you need to know about these requirements [here](#) » Get detailed instructions on downloading Mobile Content using WAP [here](#) »
- Special Notice and Disclaimer:** Downloading Mobile Content that requires WAP Access is sent to your Mobile Handset as a Service Indicator (Push Message or Browser Message). You must activate your Service Inbox prior to downloading (Learn more on how to do this [here](#) »). Also ensure your Service Inbox is clear before requesting Mobile Content (A full Service Inbox will result in failed downloads for which eXactmobile can not be held liable).
- Network Data Charges:** Downloading content using WAP will incur additional Network Data Charges. This is subject to the Network Data Rate. For 1 MB of data transferred the present Network Data Rate Charges are R2 for Vodacom, MTN & Cell C and R0.50 for Virgin Mobile
- Original Artist Guarantee:** eXactmobile is the ONLY provider to support the ORIGINAL ARTIST for True Tones and Full Track downloads. Beware of FAKES from other providers advertised as "sound-alike", "cover version", "made famous by" or "in the style of".



Complete Your Purchase

[« Back](#) | [Close x](#)

- NOTE:** You are registered with a Nokia 9500 that does NOT support True Tone Full Track Downloads. To change your handset, [click here](#) »
- IMPORTANT NOTICE!** Full Track Downloads are large in file size and require a 3G compatible-and-enabled handset AND SIM Card. Alternatively you require a compatible handset with an EDGE capable-and-enabled SIM Card to download successfully! Your handset MUST also have sufficient memory available (we suggest on average 4 MB, albeit Full Track file sizes vary and may be larger – we indicate the size of your track for your information). Please also ensure your 3G or EDGE service is enabled accordingly (contact your Service Provider in this regard).

Send this Mobile Item to the following

Mobile Number:

Remember:
Enter your Mobile Number in the International Format
Country Code + Network Prefix + Mobile Number
e.g. 27821234567

- To complete your purchase your Mobile Phone Account will be billed **R 20.00 (Incl. VAT)**
- For detailed support:** Contact our Support Call Centre on **0822 302 222** (06h30 - 22h00) or e-mail us at support@exactmobile.com

Sections of the Code considered

Section 9.2.7 and 9.2.15 of the Advertising Rules were considered.

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

If any additional bearer (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"

- *[See also 'PRICING' below]*
- *[See also 'TOTAL ACCESS REQUIREMENTS' below]*

9.2.15 PRICING: Show component, bearer and total cost // Cannot use term Standard Rate when no free / discounted SMS/Minutes cannot be utilised.

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a) *Bearer Costs:*

If additional WAP/GPRS bearer charges may be incurred over and above any other Access Channel costs, the possibility thereof must be indicated.

eg "2x R5 SMS = Total R10 + WAP Charges"

Decision

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.

It is a theme throughout the Code and the Advertising Rules that sufficient disclosure around pricing must be given to consumers to enable them to make an informed decision about whether to purchase the content or services on offer.

It is also clear from the provisions of section 9.2.7 read with 9.2.15 that the principle of proper disclosure applies equally to bearer charges. The wording of section 9.2.7 is clear, should there be additional bearers required, this must be disclosed to the consumer together with the possibility of additional bearer charges being incurred. If it was sufficient for the IP to simply disclose the fact that additional bearers were needed to access the content / services, without any reference to the possibility of additional charges being incurred, the section would have been worded accordingly.

The wording of section 9.2.15 (a) is also clear. Although the section does not prescribe the exact wording that a disclosure must include, it clearly states that the disclosure must be sufficient to alert consumers to the possibility of additional bearer costs being incurred over and above the Access Channel costs.

I am not satisfied with the SP's response to the effect that the reference to "W" or to "WAP" is sufficient. The use of this symbol and/or the word simply alerts the consumer to the fact that these additional requirements are necessary to access the content / service. There is no reference to "charges" anywhere in the body of the advertisement or in the T&C.

The complaint is accordingly upheld.

Sanction

It has been noted, as a mitigating factor, that the SP has amended its web site advertisements to now include the actual cost of the additional WAP charges.

However, as an aggravating factor, it is noted that the SP has been found guilty of the very same contravention which was the subject of the SP's complaint against the IP in complaint no. 0636. Competing members are once again urged to assist each other amicably in complying with sections of the Code which are being overlooked and/or contravened for the benefit of consumers in general rather than using this as a basis for complaints against each other under the Code.

The SP is fined R1000 for the contravention of section 9.2.7 read together with 9.2.15 (a) of the Advertising Rules.