



REPORT OF THE ADJUDICATOR

Complaint reference number:	12656
WASPA member(s):	SMS Cellular Services
Membership number(s):	SP - (0040)
Complainant:	WASP Monitor
Type of complaint:	Television
Date complaint was lodged:	2011-04-14
Date of the alleged offence:	2011-04-14
Relevant version of the Code:	10.0
Clauses considered:	3.1.1, 4.1.1, 6.2.2.
Relevant version of the Ad. Rules:	Not applicable
Clauses considered:	N/A
Related cases considered:	0350

Complaint

The Complainant indicated that the SP in this matter ran a commercial on SABC 2 without providing viewers with the actual cost of sending SMSs. The Complainant also indicated that this was a repeat offense. The Complainant further requested the advertisement to be withdrawn.

Service provider's response

The SP indicated that it would make the necessary amendments. After it was requested, it also provided the Complainant with a time plan. It subsequently pulled the commercial on the 4th of May 2011.

Sections of the Code considered

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.

4.1.1. Members must have 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.

Decision

In adjudicating a matter the Adjudicator has to rely on the information submitted and hence presented to him/her. The Adjudicator has taken note of the Complaint and the SP's subsequent reply.

From the facts and the SP's subsequent reply the Adjudicator in this matter has no alternative but to find the SP in breach of section 6.2.2 and 4.1.1.

Whether the SP was in breach of sections 3.1.1 is an assumption that can only be rebutted by the SP in addressing same. It is unfortunate that the SP did not address the allegation and the Adjudicator therefore finds the SP also in breach of sections 3.1.1. This finding is based on the fact that the SP did not act professionally in dealing with the viewers when it omitted the costs.

Sanctions

In determining an appropriate sanction, the following factors were considered:

- The prior record of the SP with regard to breaches of the relevant sections of the Code of Conduct; and
- The SP's subsequent failure to remove the advertisement immediately.

Not providing costs is viewed as a serious offence and the SP's subsequent failure to remove the advertisement only on the 4th of May 2011, after the complaint was lodged on the 14th of April 2011, could create the impression that it does not see such offence as serious, especially in light of the fact that this has been a repeat offence.

Although the SP's record with WASPA is impeccable, with only one prior adjudication upheld, the Adjudicator is of the opinion that the seriousness of the various breaches and the SP's lack to act immediately, justifies a penalty that reflect the same.

However, since the SMS rates offered were standard, it is the opinion of the Adjudicator that no real damage was caused to viewers, although some viewers might be under the impression that SMSs can be for free.

The SP is fined R 50 000-00 for its breaches of sections 4.1.1 and 6.2.2 of which the total amount is suspended for a period of 6 (six) months. Should the SP be found guilty of similar breaches within the 6 (six) months, it would become liable to pay the fine of R 50 000-00.

The SP is formally reprimanded for its breach of section 3.1.1.