

REPORT OF THE ADJUDICATOR

Member	Nashua Mobile
Service Type	Communication

1 COMPLAINT NO. [complaint number]

Complaint date:	15 May 2007
Code Version:	4.92

1.1 The Complaint

The complainant alleges that the pricing in the sms sent to him was misleading as the total cost contained in the advert was incorrect.

1.2 Complainant's allegations

The complainant makes the following allegations:

"I recieved from the number +2782007067036. The folowing SMS at 14:34:16 15/05/2007:

Hi you have been Pre-approved for a second line Please come thru with your ID and get the Nokia N73 @R167.80 total cost only @ Autopage Cellular Vodaworld

I then phoned Autopage Vodaworld and enquired about the Nokia \ "N73 @R167.80 total cost\ ". They noted that the cost is actualy the cost per month. In my view this is false advertising and condradicts pionts 6.2.2 and 6.2.4 of your conduct.

The complainant states that, in his view, the Member has breached 6.2.4 and 6.2.2 of the Code.

1.3 Member's response

The Member responded to the Complaint on 11 June 2007 as follows:

"We write to confirm that an error was contained in the abovementioned SMS.

The person typing in the SMS failed to put in the words "per month" after the total cost. This is clearly an error as it is unlikely that one would knowingly take the risk of advertising a handset worth R3000 at a total cost of about R176 solely in an attempt to lure customers to its stores. This would not only be unprofessional but also nonsensical for a large organisation such as ourselves to risk destroying relationships and an image that we have spent much money and many years to build.

We therefore submit that rather than misrepresentation, this was a case of mistake and now write to apologise for such error and any inconvenience that may have been caused by such error. We are also looking at a system of controlling outgoing SMSs in order that we may prevent a repeat of this incident."

1.4 **Provisions of the Code considered**

6.2.2 and 6.2.4

1.5 **Decision**

The question of whether or not the provisions mentioned above have been breached is a question of fact. Whether or not the breach arose as a result of intention or negligence is a question to be considered in mitigation.

The sms did not contain the full price and this is not disputed. The member has breached 6.2.2 and 6.2.4 of the Code.

1.6 **Sanction**

It is acknowledged that a breach of 6.2.4 results in a breach of 6.2.2 but, given the nature of the sanction below, it is not necessary to consider the implications of the fact that the conduct gives rise to two breaches of the Code.

It is clear from the member's explanation that the failure to insert the words *"per month"* after the price was a genuine mistake. I accept the

explanation given and agree that, given the content of the sms, there was no real intention to mislead the consumer.

The consumer was not prejudiced.

The member has apologised and rectified the error. It has further undertaken to implement further controls to prevent incorrect information being sent in future.

- 1.7 Accordingly, I impose no sanction on the member.
- 1.8 The member should take note however that if it breaches these provisions again with similar conduct this finding may be used in aggravation of sentence.

DATED at SANDTON this 27 JUNE 2007