



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Integrat
Information Provider (IP) (if any)	Magic SMS
Service Type	Advertising
Source of Complaints	Secretariat
Complaint Number	2735
Date received	23 November 2007
Code of Conduct version	5.3

Complaint

The following Complaint was raised by a member of the WASPA Secretariat in his personal capacity:

“Tuks FM, 107.2 FM - advertises you can send your song request for \“Total Radio Takeover\” to 24996 (belonging to Integrat according to shortcode lookup). They don't mention the price of an SMS. I believe this is an infringement of the WASPA code of conduct. I heard this advertised throughout the night between 9pm and 10pm.”

SP Response

The SP passed on a comprehensive Response received from the IP at the request of the former:

“MagicSMS offers this service to Tuks FM. Tuks FM is a well-respected campus based student radio station that has been operational for more than 20 years. They have been using the short code 34996 as a means of interaction between the station and their listeners since August 2004.

Tuks FM DJ's inform the listeners on air of the opportunity of interacting with the station via sms. They also make a point of informing the listener of the cost associated with the use of this sms service. It is important to note however that, in the light of Tuks FM being a student based community radio station, it sometimes happen that during a late night shift a new trainee DJ might get the opportunity to present a show in the spirit of training. This "training" may lead to an added nervousness and an atmosphere of anxiety in the studio, which might lead to the odd slip of the tongue. It is therefore important to note the human element. This is not a prerecorded media advertisement where repeated compliance is guaranteed. It's a live broadcast and many a time training ground for rookie DJ's so if pricing is omitted, it is not intentional.

It is also important to emphasize the fact that during these late night slots, listenership reduces dramatically as a result of the time of the broadcast. In this case however, it was not only the late night hours that lead to a reduction in listenership. The fact that exams finished during middle November resulting in most students cutting ties with the university during the holidays, also contributed to a huge drop in listenership. The complaint clearly refers to the hours of 9pm and 10pm. During that period a total of only 15 sms messages where sent to Tuks FM on 34996. Please understand that we are in no way trying to trivialize any situation where the WASPA Code of Conduct is being blatantly disregarded and this does not excuse the oversight, but it might be seen as a mitigating factor as it limited the amount of people who may have used the service without knowing the full price.

However, the station's commitment of informing their listeners does not only stop at live reads. Even on the Tuks FM website under the "Contact us" tab, it clearly states, "34996 Text messages cost R2 an sms. Proudly brought to you by MagicSMS". So not only do they promote the cost associated with the use of the service, but they also clearly show the name of the Information Provider. This allows the user to not only make contact with the station should there be any complaints about the sms service, but also allow for the opportunity to contact the Information Provider directly should they feel that the service is in any way unethical in it's dealings or not up to standard in it's delivery.

During this period of more than 3 years since the inception of the 34996 service, not a single complaint has ever been raised against this service. No complaints were received by WASPA, Integrat, MagicSMS or Tuks FM. Therefore, this complaint that was lodged was the first of its kind."

The Complainant then raised a number of points relating to competitor complaints which are not regarded as relevant to the resolution of this matter and accordingly not set out in this Adjudication.

"That being said, it is important to note that we firmly support the WASPA Code of Conduct and do not condone in any way an act that shows blatant disregard for the rules and regulations pertaining to our industry. However, we do believe that history proves that MagicSMS and Tuks FM always try their utmost to provide services that attain an extremely high level of trust, integrity, transparency and confidence. Hopefully, this shows that if there were any disregard shown, it was in no way blatant or intentional.

Also, it is important to note that Tuks FM is currently in the process of producing additional means of communicating with their listeners by means of an official "Total Radio Takeover" advertising campaign that will obviously also clearly state the cost of the sms. This advertising campaign will be aired at a high frequency as an additional method of creating awareness, not only for the show and/or the service, but also relating to the cost associated with use of the service.

So, assuming the accusation is true in the absence of provided evidence such as a recorded file of the alleged transgression, based on good faith and the honorable word of the complainant, we hereby plead NOT DELIBERATELY GUILTY to the charge of "Breaching the Code".

Sections of the Code considered

The following section of version 5.3 of the WASPA Code of Conduct was considered:

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

Decision

It does appear to the Adjudicator that a breach of the Code of Conduct occurred but the Adjudicator accepts the Response provided by the SP insofar as it relates to the Complaint itself (and not as it pertains to the nature and motives of the Complainant).

The Adjudicator regards it equitable to make no finding in this matter but to order rather that the SP ensure that the IP send a formal communication to TUKS FM informing them that this Complaint was lodged and reminding them of the need to comply with the requirements of the Code. The communication should provide guidance on compliant radio advertising and a sample message and the station master or other relevant party should be requested to acknowledge receipt and confirm that presenters are properly trained in the delivery of compliant advertising.

The SP is requested to confirm to the Secretariat that both of the above communications are effected.

The Adjudicator notes finally that the sending of such communications to all relevant clients of the IP would in all likelihood be a constructive exercise.