

REPORT OF THE ADJUDICATOR

WASPA Member (SP):	Integrat
Information Provider (IP): (if applicable)	AbsoluteMobile (Pty) Ltd t/a ChristianMobile
Service Type:	Subscription Service
Complainant:	WASPA Monitor
Complaint Number:	3079
Code version:	Code v5.7 and Ad Rules v1.6

Complaint

1. On the 28th of December 2007 a complaint was lodged by the WASPA Monitor using the WASPA website in the following terms:

Name_WASP: Integrat

OtherID: 31990

Code_Breached: 9.1.4

Detailed_Description_Complaint: Ad on Facebook

"Sms PRAYER to 31990 and get a daily prayer delivered to your mobile phone, cost R3 per message."

1.Does not indicate it is a subscription service

2.Does not show cost of 31990 MO message

2. The date on which the advertisement in question appeared on the Facebook website is not stated, but as the portions of the code relevant to this complaint are unchanged between version 5.3 (effective from 20/7/2007) and version 5.7 (effective from 13/12/2007), this is immaterial, and the adjudication will be refer to version 5.7.
3. It transpired that the SP was an aggregator for AbsoluteMobile (Pty) Ltd t/a ChristianMobile.

Response

4. The SP forwarded the IP's response to the WASPA Secretariat on the 15th of January 2008. The essence of the response was as follows:

- 4.1. The clause of the Code of Conduct cited by the Complainant relates to competitions and hence does not relate to the service offered by the IP.
 - 4.2. The IP offers a subscription service which transmits regular inspirational religious messages via SMS to those who sign up for the service.
 - 4.3. The IP admits that the advertisement did not contain the words “subscription service” or any other explicit indication that the service was a subscription service, but that this was an innocent oversight.
 - 4.4. The use of the word “daily” in the advertisement makes the fact that it is a subscription service clear.
 - 4.5. The above mistake was rectified with the addition of the words “subscription service” within an hour of the IP receiving the complaint.
 - 4.6. The cost stated on the advertisement was incorrect: the true cost was not R3.00 but R1.50.
 - 4.7. The service is offered on virtually a not-for-profit basis, in that the cost per SMS sent by the IP of R1.50 barely covers the cost of rendering the service. The IP disclosed profits made in offering the service which bears this contention out.
 - 4.8. Accordingly the purpose of the service is not to make a profit but to deliver inspirational religious messages for evangelical purposes.
5. I have no reason to disbelieve the IP’s version.

Portion of the Code Considered

6. The IP is correct in pointing out that the Complainant has cited the incorrect clause in the WASPA Code of Conduct. The part of the Code relating to subscription services is clause 11, specifically 11.1.1:
 - 11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as “subscription services”.
7. The second ground of complaint relates to pricing, to which clause 6.2 is relevant:
 - 6.2. **Pricing of services**
 - 6.2.1. All advertised prices must include VAT.
 - 6.2.2. All advertisements for services must include the full retail price of that service.
 - 6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.

- 6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.
- 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.

Decision & Sanction

- 8. First ground of complaint: while the failure on the part of the IP to describe the service as a subscription service was a clear infringement of clause 11.1.1 of the Code of Conduct, I am satisfied that this was not intentional, a conclusion that is strengthened by the speed at which they remedied their oversight. I am also satisfied that there was little or no customer prejudice here for the following reasons:
 - 8.1. the nature of the service was clearly a subscription service, hence there was little likelihood of confusion;
 - 8.2. the speed at which the oversight was remedied;
 - 8.3. the minimal cost of the service; and
 - 8.4. the non-profit nature of the service.Accordingly the SP is only issued with a formal reprimand for the infringement of clause 11.1.1 of the Code of Conduct.
- 9. Second ground of complaint: Clause 6.2.5 deals with premium rated services. If the IP had used a premium-rated SMS service to allow clients to sign up for its service, then it would have been obliged to list the cost of doing so. However there is no indication that the cost in this case would be more than the standard SMS rate, and certainly charging a premium in this case would have been inconsistent with the IP's response, which I have accepted. This ground is hence dismissed.