



REPORT OF THE ADJUDICATOR

WASPA Member (SP)	Vodacom Service Provider (Pty) Ltd
Information Provider (IP) (if any)	
Service Type	Advertising, IVR
Source of Complaints	WASPA Monitor
Complaint Number	#3584
Date received	27 February 2008
Code of Conduct version	5.7

Complaint

The WASPA Monitor lodged a complaint alleging breaches by the SP of sections 4.1.1, 6.2.2, 6.2.3, 6.2.4 and 6.2.5 with the following supporting detail:

“A press ad appeared in the Cape Argus on 27 February 2008. XXXTRA hot, 1 on 1 live chat, 082 233 1122.

2 Problems:

1. The ad does not display the full access cost to using this service and is misleading customers calling from the different networks. These costs should be displayed in the ad for ALL the networks.
2. When testing this service from a Vodacom cellphone, the service is costed at VAS rates. When testing from a MTN phone, the service costs the users R5 per minute for a minimum of 10 minutes, hence R50. When testing from a cell C phone, a keyword has to be sms\d to a short code - this will cost the user R30.

All these above prices should be displayed in the ad.

When calling this number from my MTN number, whether you're on the line for 10

minutes or not, your minimum charge is R50. Also, when speaking to one of the \"operators\" and me asking her what service this was, she promptly hung up.

A normal consumer will probably call back and will be charged yet another R50 minimum charge.

I would like this service terminated immediately, and not wait for decisions from our adjudicators. Once our adjudicators deem this service an ethical service, their numbers can go live again. Please confirm that this will be possible.”

It must be noted that this Complaint is in essence the same as that filed by an anonymous complainant under Complaint #3346 and which was rejected for technical reasons and not submitted to the formal adjudication process.

SP Response

In its Response the SP indicated that it had withdrawn all media advertising for the product effective from the 1st March 2008 and that it would not resume media advertising until it was able to ensure that its advertising complies with the current WASPA regulations.

The SP raised the following:

“Complaint #3346 dealt essentially with the same issue in regard to the same advert(s).

In response to complaint 3346, Vodacom undertook (purely as a gesture of good faith and without admitting that the advertisements in question were in breach of the WASPA Code and/or the Advertising Guidelines) to amend the advertisements so that they were more precise in regard to payment. The adverts were in fact been amended or discontinued with effect from 1 March 2008.

It is respectfully submitted therefore that since both complaints deal with the same issue, WASPA need only consider and adjudicate on the earlier complaint.”

The substance of the Response provided by the SP in response to Complaint 3346 is set out below:

“We must also point out that the complainant alleges that "...when the user is on the IVR line they charge him R50!!! ...". This allegation is false. In actual fact the user is advised of the R50 charge during the IVR session (which is charged at std VAS rates) and only if the user expressly accepts such charge (which he/she has to indicate by actively pressing 1 on their phone keypad) will the user in fact be charged R50. Should the user not actively accept the charge, he/she will only have been charged at standard VAS rates.

Nevertheless as a gesture of good faith Vodacom has investigated the matter and (without admitting that the advertisements in question are in breach of the WASPA Code and/or the Advertising Guidelines) undertakes to amend the advertisements so that they are more precise in regard to the payment mechanism. These amendments will be effected from 1 March 2008 as the advertising has been pre-booked until 29 February 2008.

In regard to the allegation by the complainant that the service is "against VODACOM rules as well! (cant mix bearers)" we submit that WASPA only has jurisdiction to determine an alleged breach of the WASPA Code of Conduct and/or Advertising Rules, and since there is no such rule in either the Code or the Advertising Rules (that bearers can't be mixed) WASPA has no jurisdiction to determine that issue.”

The Adjudicator requested that the SP give consideration to filing a specific Response to this Complaint #3584 to ensure that all aspects of this Complaint had been addressed. The following Response was thereafter received:

“In response to complaint #3584 we advise as follows:

The line in question initially provides the caller with the mechanism to follow should he/she wish to engage in a live chat session. During this explanation (of the mechanism to be followed) the calls are charged at VAS rates regardless of which network the consumer is calling from.

Therefore when the consumer calls the line he/she is in fact charged VAS rates regardless of which network he/she is calling from.

It is only if the consumer elects to actually engage in a live chat session that the charges are then different depending on the network in question. However before the consumer can so engage in a live chat, the consumer is advised of the different charges and must expressly accept such charge (which he/she has to indicate by actively pressing the number 1 on their phone keypad). Only if the consumer elects to engage in a live chat are the additional charges levied.

In the event that the consumer does not wish to engage in a live chat or does not actively accept the charge, he/she will in fact only have been charged VAS rates.

During the information session the consumer is also expressly advised of the minimum charge and has to accept such charge before he/she will be levied with such charge.

We re-iterate that the adverts have in any event been discontinued.

The issue raised by the complainant in regard to the "operator hanging up" is a issue that should be taken up with the SP's customer complaints department and will be dealt with accordingly."

Sections of the Code considered

The following sections of version 5.7 of the WASPA Code of Conduct were considered:

4.1.1. Members are committed to 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.

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

The essence of the SP's Response is, as I understand it, that there are two distinct phases to calls to the service and the R50 charge is not incurred until such time as the consumer has actively indicated their consent to this charge. It is in no way of automatic application for all callers and VAS rates are charged during the initial phase of the call during which the manner in which the service operates is explained. VAS rates apply, according to the SP, irrespective of which network the call originates on.

It is only at the stage where consent has been given that the second phase commences and it is at this juncture that the pricing becomes a function of the network originating the call. At this stage all charges, including the applicable minimum charge, have been explained so as to properly empower the caller to evaluate whether they wish to continue or not.

According to the SP:

“However before the consumer can so engage in a live chat, the consumer is advised of the different charges and must expressly accept such charge (which he/she has to indicate by actively pressing the number 1 on their phone keypad). Only if the consumer elects to engage in a live chat are the additional charges levied.”

The net effect is that, should a consumer elect not to proceed to the live chat services they will only be charged VAS rates for the portion of the call constituting phase 1 of the service.

The unilateral action of the SP in withdrawing the advertising in question pending the provision of clarity with regard to the compliance thereof with the WASPA Code of Conduct is noted and commended. The SP's decision to, without any admission, amend the advertising so as to create greater clarity with regard to pricing is also noted.

The crisp question to be evaluated is whether the advertisement in question displays the full access cost as required by section 6.2.2 of the WASPA Code of Conduct. In this regard the following needs to be taken into account:

- It does not appear that the Complainant has provided the full text of the advertisement and the Adjudicator, by cross-referencing Complaint #3346, accepts that the advertisement does state that "VAS rates apply";
- This in turn implies that the full access cost to the first phase of the service is provided in the advertisement;
- There is no further pricing indicated and the Adjudicator accordingly accepts that the pricing in respect of the second phase is not displayed.

Is this misleading? Has the "full retail price" of the service been displayed in the advertisement? Has the pricing information for services been "clearly and accurately conveyed to customers and potential customer".

The Adjudicator is of the opinion that the advertisement is indeed misleading although this is mitigated by the steps taken to secure the consent of callers before they commit to proceeding to the second phase. This view is based on the fact that a potential consumer deciding on the basis of the information presented in the advertisement will reasonably believe that VAS rates apply to the use of the service as a whole and will not be aware that there are significant additional charges before the actual live chat service can be accessed.

The potential prejudice to consumers lies in the simple fact that they will incur the VAS charges before they are in a position to know the full charge applicable to the service. A consumer who subsequently elects not to use the service because of the

additional charges will accordingly be out of pocket as a result of their inability to fully evaluate the cost of the service on the basis of information provided, i.e. the information set out in the advertisement.

The Adjudicator, as noted above, accepts the steps taken in mitigation but such steps do not overcome the potential prejudice to consumers although it will act to prevent them from incurring further significant charges which they do not wish to incur.

Notwithstanding the foregoing the Adjudicator is not of the view that the SP has acted intentionally in trying to mislead consumers, based on its *bona fide* attempts at informing consumers of the charges levied in respect of the second phase. The Adjudicator therefore does not find evidence that the SP is not committed to honest and fair dealings with consumers and accordingly does not find a breach of section 4.1.1.

The Adjudicator further is of the opinion that it is sufficient to find that there has been a breach of section 6.2.2 of the Code in that the full retail price of the service has not been displayed in the advertisement and that such failure has the potential to prejudice consumers. It is not necessary to consider in detail whether there has been any breach of the balance of the sections raised by the Complainant.

In considering an appropriate sanction the Adjudicator considered:

- The withdrawal of the advertisement and remedial action undertaken in response to Complaint 3346;
- The steps taken between phase 1 and phase 2 of the service to obtain the explicit consent of the caller to the additional charges; and
- The relatively large number of successful complaints against the SP during the first months of 2008 (although none of these were brought in respect of the sections of the Code raised here).

In the circumstances the following sanction is imposed:

- The SP is issued with a formal reprimand;
- The SP is issued with a fine in an amount of Three Thousand Rand (R3 000);
and

- The SP is ordered to ensure the rectification of its advertising so as to ensure that the full access cost of the service in respect of both the first and second phase (as outlined above) is reflected.
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